MYKOLAS ROMERIS UNIVERSITY
FACULTY OF LAW
INSITUTE OF INTERNATIONAL AND EUROPEAN UNION LAW

AIVARAS BATŪRA
European Union law and governance

RESTRICTIVE MEASURES IN EU LAW

Master thesis

Supervisor:
Doc. dr. Regina Valutytė

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ABBREVIATIONS

CFSP	-	Common Foreign and Security Policy
CJEU	-	The Court of Justice of European Union
EU	-	European Union
EPC	-	European Political Cooperation
TEU	-	Treaty on European Union
TFEU	-	Treaty on the functioning of European Union
MS	-	Member State
MSs	-	Member States
ECtHR	-	European Court of the Human Rights
UN	-	United Nations
UN SC	-	United Nations Security Council

INTRODUCTION

The relevance of thesis presented. European restrictive measures date back to early 80's but only recently did their role was enhanced and at the same time they started to attract more attention to themselves because of the difficulties arising from their implementation and application procedures. The rise of the use of sanctions can be traced back to the end of Cold War, and ever since then a determination of a breach of or threat to international peace and security is testimony to their importance in law enforcement[1].

Till the 2000's the application of restrictive measures mostly concerned states and persons associated with the states but since then, the situation dramatically changed[2]. One can wonder if terrorism threat really was that situation which changed EU stance towards sanctions against individuals not associated with the state, but interstate nature of everyone's attention as of how to deal with arising threat which previously was thought to be only local, only concerning countries in which the terrorists are based. But the dawn of new millennia marked a change in terror actions which were started to be carried out globally. The organizational structure of terrorist organizations became global itself as it is evident with al-Qaeda which developed global structure, which did not depend on support from the states but got their financial funds themselves, therefore there were little associations with the states. So the war against terrorists became new target for UN and UN SC resolutions were implemented in EU legal order in what could be seen more than a questionable manner and it imposed new threat to EU – how will it deal with new sort of legislation coming from UN, sanctions changing from directed to states to those which are directed toward individuals. There could have been two options – to indiscriminately follow the practices of UN or to give rise a different sanction regime which ultimately led EU to a new dilemma as in how to deal with new sort of legislation, what jurisdiction does EU have to impose and maintain the restrictions and what could be seen as general guidelines to follow through with these restrictions[3].

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[1] Khan D. E., Nolte G., Simma B. et al. The Charter of the Unted Nations : a commentary. Oxford: Oxford University Press, 2002. P. 702-705.

[2] Drulakova R., Rolenc J. M., Travnickova Z. et al. Assessing the Effectiveness of EU Sanctions Policy// Central European Journal of International and Security Studies. 2010, Vol 4, Issue 1. P. 106-107.

[3] Kadi v Council and Commission. Case T‑315/01, judgment of Court of First Instance of the European Communities of 21 September 2005;
Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Case C–402/05 P and C–415/05 P, judgment of the Court (Grand Chamber) of 3 September 2008.

There are different types of restrictive measures which could be employed either against natural or legal persons and groups or non-State entities and Article 215 of the TFEU provides the legal basis to adopt restrictive measures which are necessary to achieve the objectives of the CFSP. These problems are analyzed by legal scholars such as Dr. Christina Eckes[4], Francesco Giumelli[5], Clara Portela[6] and many others[7] since the restrictive measures are an ever evolving part of EU and with every iteration of the Treaty restrictive measures are changing therefore this thesis focuses on an ever changing dynamics of the restrictive measures and the problems it causes for the MSs.

With the latest change coming with the Lisbon Treaty[8], the application procedure on the national level changed quite clearly since it is no longer required for the CFSP measures to be implemented at the national level, but still confusion remains because some lists still have to be implemented at the national level while there is no need for local legislature for other which gives rise to confusion. With Lithuanian Presidency of the Council of the European Union in 2013 it as relevant topic as it could be because one of the aims of the Presidency is an initiative to improve the efficiency of implementation of EU Council decisions, which define restrictive measures for the individuals[9].

The object of this thesis is to analyze the development of EU restrictive measures and to analyze Lithuania's practice in sphere of national legislation of the restrictive measures. Since international sanctions originated in the UN it is important to analyze the historical background of the EU restrictive measures as it is important part of understanding how does EU changes the development of the sanctions regime worldwide. The implementation of restrictive measures in national legislation is rarely mentioned topic among the scholars so it is important to analyze how restrictive measures are implemented, monitored and executed with a particular regard to Lithuanian legislation.

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[4] Eckes C. EU counter-terrorist policies and fundamental rights: the case of individual sanctions. Oxford; New York: Oxford University Press, 2009.
[5] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 2013, No. 129.;
Giumelli, F. Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War. Colchester: ECPR Press, 2011.
[6] Portela C. National Implementation of United Nations Sanctions: Towards Fragmentation// International Journal: Canada's Journal of Global Policy Analysis. 2010, Vol. 65.
[7] Amato G., Ziller J. The European Constitution: cases and materials in EU and member states' law. Cheltenham; Northampton (Mass.): Edward Elgar, 2007. P. 269.
[8] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 2007/C 306/01 of 13 December 2007.
[9] The aim is more effective implementation of decisions on refusal of entry into the Schengen area // http://www.eu2013.lt/en/news/pressreleases/the-aim-is-more-effective-implementation-of-decisions-on-refusal-of-entry-into-the-schengen-area; last visited: 12/10/2013

The aim of this thesis is to analyze the legal basis and collision with interests of non-state actors, their gradual evolution and problems arising in practice while proposing a proper implementation in of restrictive measures documents in Lithuania's legal system.

Objectives of the study:

1) To disclose the genesis of restrictive measures, their types and place in the EU legal system.
2) To reveal the development of the EUCJ case law concerning restrictive measures, the UN's influence over the EU over the application of restrictive measures and abnormalities in situations when restrictive measures are imposed against or non-State entities.
3) To examine the implementation of restrictive measures by the MSs and in particular the Lithuanian legal acts implementing EU restrictive measures and make suggestions as to how it could be possible to improve the current legislation.

Methods:

Analysis of scientific literature is used in order to reveal the content of restrictive measures in legal literature.

Analysis of documents is applied when the case law of the CJEU is examined in order to reveal the difficulties and gradual evolution of legal documents when restrictive measures are employed against non-State actors.

Historical analysis method is applied in order to find the genesis of restrictive measures in EU and international law.

Linguistic Method is used in understanding and interpreting the legislation of the EU, the UN and Lithuania.

1. THE CONCEPT OF RESTRICTIVE MEASURES IN EU LAW

1.1. Sanctions v. restrictive measures

The concept of restrictive measures is of EU origin and is used in order to replace a more common term sanctions and according to some scholars these terms can be used interchangeably[10]. Sanctions, just as restrictive measures, in national law context are closely related with legal norms – in order to maintain certain behavior or follow certain behavior pattern legal norms are employed, breaking which the state imposes certain restrictions[11]. To make things even more complicated in international law context the term restrictive measures or sanctions is not so clear cut as in national law – it is not as simple as to follow the rule of law Term sanctions is still widely used in legal literature in order to describe various measures, both military and non-military actions, taken against variety of targets (entities or persons against which the measures are applied)[12].

In this part it must be noted that TFEU does not prescribe a possibility to impose military actions, making it a substantial difference in defining the restrictive measures used in EU. The definition of sanctions or restrictive measures *stricto sensu* on international level consists of three elements – a) coercive measures taken against the will of target entity, be it in material, moral or legal (loss of status, expulsion, etc.), b) the measures taken are damaging targeted entity, be it the material or moral loss, and c) the decision is taken by the competent organ, based on real findings and not just allegations or interpretation of other party.[13] The part of defining the concept of restrictive measures lies in the notion that it is not required that the other party had breached legal regulation, various cases throughout the history shows that sanctions or restrictive measures can be used both in order to prevent the breach of international norms or to enforce a certain behavior of another party and it is entirely in line with UN charter which gives UNSC discretion to apply measures in order to maintain or restore international peace and security[14], the same can be said implied by the TEU and TFEU[15]. The other part which no doubt forms part of concept of both restrictive measures and

[10] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 2013, No. 129. P. 7;
Sanctions or restrictive measures// http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf; last visited: 10/5/2013.
[11] Vaišvila A. Teisės teorija. Vilnius: Mykolo Romerio universitetas, 2004. P. 243-245.
[12] Farral M. J. United Nations Sanctions and the Rule of Law. Cambridge: Cambridge University Press, 2007. P. 6-7.
[13] Abi-Saab G. /edited by Gowlland-Debbas V. United Nations Sanctions and International Law. The Hague; London; Boston (Mass.): Kluwer Law International, 2001. P. 39.
[14] Farral M. J. United Nations Sanctions and the Rule of Law. Cambridge: Cambridge University Press, 2007. P. 7.
[15] Authors note: A. 75 of TEU along with A. 215 of TFEU gives right to impose restrictive measures as to "regards preventing and combating terrorism and related activities".

international sanctions is their multilateral nature, since it is being initiated respectively by the competent organs of EU and UN which consists of multiple MSs.

While sanctions and restrictive measures are used interchangeably in the legal literature, the restrictive measures in EU while still playing the same role as sanctions on international level are more narrow in their application since restrictive measures are not designed as to provide justification to the military intervention as it is the case with sanctions[16], while definition is staying the same as that of sanctions.

1.2. Introduction of restrictive measures to the EU legal system

The tale of how restrictive measures came to be starts with the end of Second World War when the UN Charter was adopted. The UN Charter's chapter V: the Security Council, Article 24 indicates that United Nation Members confers Security Council "primary responsibility for the maintenance of international peace and security" while article 25 confers them the duty to "accept and carry out the decisions of the Security Council in accordance with the present Charter"[17]. While not explicitly, the propability of use of sanctions was established by these articles and at the same time provisions being part of the UN Charter they did not see much use during the period of Cold War, during which they were invoked only twice – against Southern Rhodesia in 1966 and against South Africa in 1977[18]. However the change came along with the Ba'athist Iraq invasion of the State of Kuwait, also called the Persian Gulf War[19]. The new era was marked not as much as frequency but more as reconceptualization of the threat to international peace.

Along with the erosion of military force in conflict solving the sanctions over time evolved to include measures taken against state and non-state entities such as arms embargoes, economic, financial, diplomatic measures, and limited use of force to ensure the compliance with sanctions and even military action in case of Persian Gulf War but much still lied ahead in the evolution of UN

[16] UN SC resolution No. 678(1990) of 29 November 1990 authorizing the use of all necessary means to uphold and implement resolution 660 (1990) and to restore international peace and security in the area, which later resulted in "Gulf War"

[17] Charter of the United Nations //Valstybės žinios. 2002, No. 15-557.

[18] "United Nations (UN) ." Encyclopædia Britannica. Encyclopædia Britannica Ultimate Reference Suite. Chicago: Encyclopædia Britannica, 2013.

[19] "Persian Gulf War." Encyclopædia Britannica. Encyclopædia Britannica Ultimate Reference Suite. Chicago: Encyclopædia Britannica, 2013.

sanctions policy and yet it was no longer used only in order to protect rights of a state as opposed to duties of another state[20]. Another difference since the sanction introduction to international law is their widening scope – at the dawn of sanctions "a threat to international peace and security" was considered restrictively narrowing the use of sanctions in the internal conflicts, however the evolution came to this sphere as it began to be considered that internal armed conflict can be a cause to use sanctions in a state, which in turn also gave rise to new form "smart" or targeted sanctions in order to ease the burden on affected countries[21]. When using sanctions (the same goes for EU restrictive measures) against a state it is affecting both those who are intended targets, commonly state officials and other elite, but most importantly the citizenry are suffering the consequences, which in turn cast, without a shadow of doubt, a bad light upon sanctions to the people worldwide[22]. The notion that ordinary people suffer more than those against whom sanctions are intended could be considered to be one of engines which gave rise to targeted sanctions since the groups or individuals against whom sanctions are intended to have effect are, usually, the elites of country or countries concerned so sanctions targeted against a state would have little to no desired effect[23].

The beginning of when EU became involved with sanctions policy is still being debated by the scholars – some suggests that is was with the Treaty of Rome (1957)[24] in which the effects of economic sanction on common market were being considering by introducing article 224 which depicted that "in order to carry out obligations it has accepted for the purpose of maintaining peace and international security", but just as it referred to Member States as those which should consul each other but reality was one in which EPC had a lot of discussions about whether to join or impose sanctions on various occasions with no common decision between the MS until 1970s[25]. The change came along with London Report (1981)[26] and Single European Act (1986)[27]. On 13 October 1981,

[20] Gowlland-Debbas V. United Nations Sanctions and International Law. The Hague; London; Boston (Mass.): Kluwer Law International, 2001. P. 2

[21] Portela C. National Implementation of United Nations Sanctions: Towards Fragmentation// International Journal: Canada's Journal of Global Policy Analysis. 2010, Vol. 65. P. 15.

[22] Khan D. E., Nolte G., Simma B. et al. The Charter of the Unted Nations: a commentary. Oxford: Oxford University Press, 2002. P. 702-703

[23] Cortright D., Lopez G. A., Gerber-Stellingwerf L. /edited by Weiss T. G. and Daws S. The Oxford handbook on the United Nations. Oxford: Oxford University Press, 2008. P. 357-358.

[24] Treaty establishing the European Economic Community, 25 of March 1957.

[25] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 7-9.

[26] Report on European political cooperation (London, 13 October 1981)// http://www.cvce.eu/obj/report_on_european_political_cooperation_london_13_october_1981-en-869a63a6-4c28-4e42-8c41-efd2415cd7dc.html; last visited: 10/25/2013.

[27] Single European Act of 29 June 1987. Official Journal L 169.
Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 2007/C 306/01 of 13 December 2007.

in London, the Foreign Ministers of the Ten (Member States) adopt a report on EPC that sets out a more coherent approach to international issues and to matters of security and especially the 13th part section of report which stated that "The Political Committee or, if necessary, a ministerial meeting will convene within forty-eight hours at the request of three Member States"[28]. The long stagnation of 1970s ended only 2 months after London Report when sanctions against the Soviet Union were adopted as a response to events in Poland, followed by an arms embargo against Argentina in spring 1982[29]. These changes in the EC sanction regime were followed by Single European Act, which at its heart was concerned with economic matters – gradual establishment of single market, while other matters could be regarded as secondary it still gave legal basis to EPC[30] which gave more responsibility to EPC in turn followed by the need to be established by a more detailed regulation[31]. However during the history of EC, the sanctions imposed were mainly economic in nature, with other types few and far between[32], the turning point came along with the Maastricht Treaty (1992)[33]. While relatively few authors associate sanctions as part of EU legal system before the Maastricht Treaty it can be explained in a very simple way – the early EU was mainly economic in form and function and the most prominent step in evolution of sanctions was in the Maastricht Treaty of which one of the goals was to established the CFSP[34]. The Maastricht Treaty introduced a two-tier procedure for adoption of restrictive measure – first the MSs agree on imposition of sanctions within the intergovernmental context of CFSP and they are implemented by measures based on Article 113 EC, or directly by each Member State when they fall outside of EU competence such as arms embargoes or visa bans[35]. However the practice was that of very prolonged procedures – the CFSP decision followed by Council regulation took long even when the common position had already

[28] Report on European political cooperation (London, 13 October 1981)// http://www.cvce.eu/obj/report_on_european_political_cooperation_london_13_october_1981-en-869a63a6-4c28-4e42-8c41-efd2415cd7dc.html; last visited: 10/25/2013.
[29] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 9.
[30] Craig P., de Burca G. EU law: text, cases, and materials. Oxford: Oxford University Press, 2010. P. 11-13.
[31] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 10.
[32] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 9.
[33] Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7 of February 1992, Official Journal C 325/5.
[34] Treaty of Maastricht on European Union // http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm; last visited: 11/25/2013
[35] Portela C. European Union Sanctions and Foreign Policy: When and Why Do They Work? London/New York: Routeledge, 2010. P. 24.

been long since established as it was in unfolding crisis in the Kosovo region of Yugoslavia[36]. As EU increasing international dimension could also be seen as playing part in the increasing role of restrictive measures since previously mainly economic union was gradually extending into the international dimension. Another point to take note of is the UN sanctions policy change after the cold war – the increase of use of sanctions and their reconceptualization, the increased use and diversity of sanctions[37] also should have played an important role in the EU since all of EU MSs were (and for that matter still are) MSs of UN. The "big" question at the time was whether EU has the authority to impose restrictive measures on third-states without prior authorization of UNSC[38]. The question arose in the first place because of UN Charters Article 53 which states that "…no *enforcement action* shall be taken under regional arrangements or by *regional agencies* without the authorization of the Security Council…" While EU is (now) considered to be regional agency[39], the practice of UNSC does give the benefit of a doubt whether restrictive measures of EU will ever be considered as *enforcement action* because these, by majority of UNSC, be it political or legal reasons, are considered to be of only military nature which gives EU quite big possibility of maneuvering without the need of approval from the UN[40]. Another part of history of restrictive measures come with a "joint actions" introduced in article 14 of TEU (now article 28 of TEU) and "common positions" of article 15 of TEU (now article 29 of TEU) which were used in order to further CFSP goes as it could be seen from Council's practice[41]. However as the time went on this practice was found to be not needed with the Lisbon Treaty these means were no longer available in the current redaction of TEU and TFEU and only what previously was known as common position survived in a new shape and is now called by the name of Council decision while the joint action

[36] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2005. P. 12.
[37] Cortright D., Lopez G. A., Gerber-Stellingwerf L. /edited by Weiss T. G. and Daws S. The Oxford handbook on the United Nations. Oxford : Oxford University Press, 2008. P. 353-356.
[38] Stephen (1993) The application of international economic sanctions: the united nations, European community and 'Yugoslavia'. Masters thesis, Durham University. P. 44. http://etheses.dur.ac.uk/5784/; last visited: 11/7/2013.
[39] Ševeliovaitė T. Jungtinių Tautų Organizacijos Saugumo Taryba: bendrieji ir specialieji įgaliojimai. Master thesis, social science, law. (01 S).– Vilnius: Mykolas Romeris University, 2012. P. 41.
[40] Stephen C. (1993) The application of international economic sanctions: the united nations, European community and 'Yugoslavia'. Masters thesis, Durham University. P. 44// http://etheses.dur.ac.uk/5784/; last visited: 11/7/2013.
[41] Council Common position 2001/154/CFSP of 26 February 2001 designating Taliban and Bin Laden and his associates;
Council Joint action 1999/34/CFSP of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons.

was not as successful and now it is gone without a trace from the current iteration of the Treaty and is left only in the annals of history[42].

1.3. The evolution of the EU's restrictive measures regime

Another major step in restrictive measures policy came after long delay in 2004 with EU Council introducing both the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy"[43] and "Basic Principles on the Use of Restrictive Measures (Sanctions)"[44] and later, at 2008, EU Best Practices for the effective implementation of restrictive measures[45].

Council document 10198/1/04 about Basic Principles on the Use of Restrictive Measures Sanctions states that EU is to "support the UN and fulfill our obligations under the UN Charter" which gives EU a way to follow decisions adopted by UN Council by imposing corresponding restrictions in EU law but nonetheless it still retains possibility to impose "autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance."[46] These restrictive measures are functional to the attainment of one of the main goals of the CFSP, namely maintaining peace and international security. The sanctions are "an important way to maintain and restore international peace and security in accordance with the principles of the UN Charter and of our common foreign and security policy" and it is part of the "efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance."[47]. Worth mentioning are so called targeted or smart sanctions – these are very important part of the restrictive measures regime. During the early history of sanctions or restrictive measures, the measures employed were

[42] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01
[43] European Union Council. Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, Doc. 15579/03 of 3 December 2003.
[44] European Union Council. Basic Principles on the Use of Restrictive Measures (Sanctions), doc. 10198/1/04 of 7 June 2004.
[45] European Union Council. EU Best Practices for the effective implementation of restrictive measures, doc. 10533/06 of 14 June 2006.
[46] European Union Council. Basic Principles on the Use of Restrictive Measures (Sanctions), doc. 10198/1/04 of 7 June 2004.
[47] Ibid.

those which affected whole countries or regions. It however led to dissatisfactory results as it does now when sanctions have heavy economic burden on whole countries (such as Côte d'Ivoire case) and it could not always lead to the success if the actors against which the measures are employed enjoy vast political power as it is the case now in Democratic People's Republic of Korea where despite various sanctions by international community the regime still stands strong. However with dawn of targeted sanctions it is now possible and even suggestive to use them whenever possible in order to affect those whose actions are considered as inappropriate in the international arena. The EU with Council's Basic Principles on the Use of Restrictive Measures (Sanctions) (EU Council, Brussels, 7 June 2004, 10198/1/04) began such initiative which in case of Common position 2001/931/CFSP and its amendments are still being followed.

Another Council document which defines restrictive measures and explains the meaning of freezing of assets and economic resources is 15579/03 – Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy. As general provision it provided that members of designated persons relatives shouldn't get their rights restricted on no other basis other than of their own responsibility for relevant policies or actions[48]. It's interesting that from a technical point of view, the freezing of funds is not a sanction, as it is a preventive measure that does not rely upon criminal standards. However asset freezing measures have been widely referred to as 'sanctions' by national governments, the EU, the UN and scholars alike.[49] In the guidelines it is stated that The European Community can adopt legislative implementation measures through a Regulation based on Articles 60, 301 and in some cases on 308 of Treaty establishing the European Community[50] (now respectively Articles 75, 215 and 352 of TFEU).

The newest act is Council document No. 10533/06 – EU Best Practices for the effective implementation of restrictive measures, is to be considered non-exhaustive compilation recommendations of general nature for effective implementation of restrictive measures in accordance with applicable Community/Union law and national legislation which are kept under constant review and they supplement the Guidelines and focus on key elements in the

[48] European Union Council. Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, doc. 15579/03 of 3 December 2003. A.19
[49] Edited by Costa O. and Jørgensen K.E. The Influence of International Institutions on the EU, When Multilateralism hits Brussels. Basingstoke: Palgrave Macmillan, 2012. P. 128.
[50] Treaty establishing the European Community (consolidated version), Official Journal C 321 E.

implementation of sanctions[51]. Even if it is not part of this document it is general understanding that restrictive measures should also respect the international obligations of the European Union and its MSs, in particular the World Trade Organization Agreements. Economic and financial sanctions are therefore used cautiously by the EU, as exceptions to the principles of the common market, which is based on free movement of capital and trade liberalization. Suspension clauses in existing agreements with third countries may have to be invoked, or such agreements may have to be terminated, before sanctions can be applied[52].

It must be noted that these restrictions against individual persons or entities before the adoption of Lisbon Treaty were are a target of debate because "smart sanctions" usually were adopted against persons within the structure of a state but if it was individual who wasn't part of the state structure When a legal entity is designated person and its assets are frozen innocent persons are affected by it but "It is settled case-law that the fundamental rights invoked by [the applicant company] are not absolute and their exercise may be subject to restrictions justified by objectives of general interest pursued by the Community"[53]. Articles 301 and 60 of Treaty establishing the European Community did not constitute an adequate legal basis for the adoption of such sanctions against individuals, so the Council also relied on Article 308 of Treaty establishing the European Community but it was directly associated with the common market objectives so the use of this article against individual persons was questioned by scholars. Considering that later the Treaty of Lisbon contained two articles - Article 215 of now the Treaty on the Functioning of the European Union (TFEU) which gave the legal basis for the financial sanctions against individuals that have been placed on United Nations lists while Article 75 TFEU provides a legal basis for the sanctions against individuals that are autonomously listed by the EU. So the Lisbon treaty granted to Council the competence to adopt asset freezing measures against individuals where it previously was a questionable practice.

Post Lisbon Treaty restrictive measures still fall within the CFSP domain and there are few articles in both TEU and TFEU concerning adoption and implementation of restrictive measures. According to article 30 of TEU "Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any

[51] European Union Council. EU Best Practices for the effective implementation of restrictive measures, doc. 10533/06 of 14 June 2006. A. 2-4

[52] Sanctions or restrictive measures. P. 3-5// http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf; last visited: 11/8/2013.

[53] Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland. Application No. 45036/9830, judgment of ECtHR, of 30 June 2005.

question relating to the common foreign and security policy to the Council". The Commission takes part in the process through the High Representative of the Union for Foreign Affairs and Security Policy who is Vice-President of the Commission and therefore can express it's opinion on the matter. The process consists of European External Action Service suggesting about measures available, whom to target, which is followed by discussions at Political and Security Committee and competent geographical working groups where MSs delegates try to come to consensus on who is and on what basis is going to be listed, after which the discussions take place at the last organ before getting approval from Committee of Permanent Representatives II and the Council – Foreign Relations Counsellors Working Group, where representatives of MSs decide on precise terms of restrictive measure[54]. The implementation of restrictive measures falls on different actors according to which type of restrictive measures it is – trade and financial sanctions "as regards preventing and combating terrorism and related activities" (Article 75 of TFEU), measures of common foreign and security policy (Article 215 of TFEU) or "to attain one of the objectives set out in the Treaties" (Article 352 of TFEU) are implemented with a Council regulation, while the travel bans and arms embargoes have to be implemented by national implementation of MSs[55].

As the recent history shows, the restrictive measures regime is on the road to changes even if the Council is still the prime actor in the sphere of CFSP, the EU Parliament not sitting still – according to Article 75 of the TFEU "as regards to preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure", which provides for inclusion of the EU Parliament in the legislative procedure when restrictive measures concerns the terrorism and related activities. The Parliament was willing to extend its power in this sphere which led to a collision between the Council and the Parliament in 2010, when European Parliament asked the EUCJ that it should "annul Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban"[56] whereas the "contested regulation is wrongly based on Article 215 TFEU, when the correct legal basis is Article 75 TFEU"[57] however

[54] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 2013, No.129. P. 11.
[55] Giumelli, F. Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War. Colchester: ECPR Press, 2011. P. 125.
[56] European Parliament v Council of the European Union. Case C-130/10, judgment of the Court (Grand Chamber) of 19 July 2012. Para. 1.
[57] Ibid. Para. 10.

the Court rejected this notion subjected by the Parliament[58]. This only shows how eager the Parliament is over exercising its influence over the CFSP and restrictive measures, which means that opinion of the Parliament must be heard (at the very least, according to the actions of Parliament itself). Strengthening Parliaments position is that with each iteration of the Treaty its influence is rising and it shows how hard it is going to be for the Council to maintain its grip over the matters of CFSP and more precisely over the restrictive measures regime as it could slip as easily as once the "ordinary" legislative procedure was with the discretion of the Council alone[59].

1.4 Types of restrictive measures in the EU law

The nature of restrictive measures makes it possible to classify restrictive measures into different categories, but different legal scholars and even EU organs themselves provide different types restrictive measures[60]. One of the most extensive classification is provided by the Joakim Kreutz who presents 8 types of restrictive measures – arms embargoes, trade sanctions, financial sanctions, flight bans, restriction of admission, diplomatic sanctions, boycotts of sport and cultural events, suspension of co-operation with a third country[61]. This could be contradicted by the paper on restrictive measures by Francesco Giumelli who classifies restrictive measures into 4 categories – arms embargoes, travel bans, economic measures financial measures[62]. Some categories overlap however the classification is different and could be improved in both cases. The restrictive measures in European Union could be classified in following order:

Arms embargoes – this type of restrictive measure refers to restrictions imposed on selling weapons and related services to regions, countries or other actors. This type of sanction is employed in order to deny the targets of getting said products from EU actors and is very easy to justify in public, because the harm to general populace is considered to be minimal and is employed in disturbed

[58] Ibid. Para 110-112.
[59] Treaty of Maastricht on European Union // http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm; last visited: 11/25/2013.
[60] Sanctions or restrictive measures. P. 3-5// http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf; last visited: 11/8/2013.
Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 6.
[61] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 5-6.
[62] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 13 May 2013, No.129. P. 22-24.

regions where such practice would be encouraged – all in all the least problematic in political sense but in practice it could be easily bypassed since the restrictions are imposed on supplying directly or indirectly said actors[63] with arms and related materials but these supply can go through various parties during their lifetime and end up in hands of those same actors against whom the restrictions are imposed. However with these measures giving clear identification of EU view on matters to actors concerned and with EU being one of the main actors in the international scene even if the criticism is presented by scholars[64], the possible benefits with little, to none shortcomings are not to be underestimated since as practice shows, arms embargoes are one of the most used restrictive measures by EU[65] and it is certainly not for their ineffectiveness why these measures are used.

Financial measures – these restrictive measures, as the name suggests, take form of financial burden on actors, be it seizing of bank accounts, prohibition of financial transactions or denying loans to central banks of targeted countries[66]. Such sanctions comprise both an obligation to freeze all funds and economic resources of the targeted actors and a prohibition on making funds or economic resources available directly or indirectly to or for the benefit of these persons and entities, while being applied by all persons and entities doing business in the EU, including nationals of non-EU countries, and also by EU nationals and entities incorporated or constituted under the law of an EU Member States when doing business outside the EU with exceptions for actors in order to pay for basic expenses[67].

Trade measures – are in many senses on the same plateau as financial restrictive measures in their expected impact, however these measures are employed in order to restrict trade on specific goods and/or services. This of measure could be employed in order to impact the situation of actors concerned because if there is specific services or goods on which actor concerned relies in order to get finances, the measures imposed could have real impact on actors way of action, to change it[68]. The measures do have to be considered in wider context in a sense that these type of measures, just like financial measures, can have tragic impact on economy of a country or region and in turn heavy

[63] To serve as an example – Council decision 2011/486/CFSP of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan.
[64] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 22
[65] European Commission – Restrictive measures in force (Article 215 TFEU)// http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf; last visited: 11/1/2013.
[66] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 13 May 2013, No.129. P. 23.
[67] Sanctions or restrictive measures// http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf; last visited:11/8/2013.
[68] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 13 May 2013, No.129. P. 24.

burden on common people[69] while having significantly (relatively) lower impact on actors against whom measures were originally intended to be employed. The case of restrictive measures on Côte d'Ivoire[70] shows how EU measures can have devastating effect on whole country and not just the actors concerned – the whole cocoa industry stopped had devastating effect on country reliant on cocoas export which led to Côte d'Ivoire default, in turn making it impossible for actual target of these measures, the president Laurent Gbagbo, to stay in power, but the effects on whole country were devastating to say the least[71]. These types of occurrences are what led to targeted or "smart" sanctions to be the dominant force in the international sanction sphere.

Travel restrictions – are about restricting access to and through the EU and are, in sense, one of kind because they can only be so called "targeted" sanctions[72]. They are imposed on individuals, usually government officials, which does no harm to the general populace of the individual's country but it imposes certain obstacles to actors concerned since no such person cannot travel to EU soil or get visa which in cases of international message is sent about the EU stance on situation and its concerns. It is relatively "soft" sanction but nonetheless as in previous was shown can have an impact on international relations sphere.

Diplomatic measures – these measures include more of an informal type of measures such as boycotts of sports and cultural events and suspension of co-operation with a third country as these measures, contrary to being classified as separate categories as suggested by Joakim Kreutz, but rather being part of restrictive measures under a broader term – diplomatic measures, as these measures are more about showing stance of EU towards some particular matters at hand when other measures are not a viable alternative. Some authors such as Francesco Giumelli do not include this type of restrictive measures in the classification, but due it can be attributed due to their nature being that of an informal nature. These measures, while rarely seeing the light of the day as official documents, still form part of EU restrictive measures as these measures can be used when actions taken by third-state actors are not in line with international practice but it is not possible to impose

[69] Ivory Coast cocoa farmers protest at EU sanctions// http://www.bbc.co.uk/news/business-12497524; last visited: 11/2/2013.
[70] Council Regulation (EU) No. 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire.
[71] Vines A. Review article: The effectiveness of UN and EU sanctions: lessons for the twenty-first century// http://chathamhouse.org/sites/default/files/public/International Affairs/2012/88_4/88_4vines.pdf; last visited: 11/2/2013.
[72] Kreutz J. Hard Measures by a Soft Power- Sanctions Policy of the European Union. Germany: Bonn International Center for Conversion, 2009. P. 6-7.

any formal sanction such as those mentioned earlier (arms embargoes, financial restrictions or trade restrictions).

Giving clear indication of sanctions is beneficial for both actors against whom these measures are employed as it shows just how determined EU is and it is giving an option for legal scholar researching restrictive measures regime an option how to classify different restrictive measures imposed by the EU. While the most common measures are arms embargoes (which can be understood since these measures are the least likely to have an impact on natural persons) the financial and travel measures specify the target and are sure to affect the persons, groups or entities concerned both within and out of EU borders. While trade restrictions are in the same sphere as financial restrictive measures they are more likely to affect the common populace and must be used with caution.

1.5. The UN's influence over the EU's financial restrictive measures

The UN influence over EU restrictive measures practice could be considered as a natural flow of things because EU all of EU MSs are MSs of UN and while being MSs of UN they have their obligations as UN SC imposes sanctions and their duty was established (in 1945) before the EU even came to be. The Article 103 of the UN Charter imposes a duty on MSs to follow the obligations imposed under the charter and UN SC sanctions fall within this definition, in effect putting EU in a situation in which it not being a MS of UN it has to adopt the sanctions or the MSs of EU would breach their obligations under the UN Charter since all of the MSs of EU are also MSs of UN. Professor Dowrick expressed that the "constitutive" treaty which is purporting to lay down universal regime (in this case the UN Charter), the states are not to enter the treaties which breach imperative provisions of it[73]. The full force of Article 103 is maintained by Article 30 of the Vienna Convention on the Law of Treaties[74] 1969 which provides that: "Subject to article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs." And so the EU had always adopted UN SC sanctions by corresponding legislative process making them EU

[73] Stephen C. (1993) The application of international economic sanctions: the united nations, European community and 'Yugoslavia'. Masters thesis, Durham University. P. 44// http://etheses.dur.ac.uk/5784/; last visited: 11/7/2013.
[74] Vienna Convention on the Law of Treaties// Valstybės Žinios. 2002, No. 13-480.

restrictive measures and by that the concept of "Path-dependency" came to sphere of CFSP. As it is called by some scholars Path-dependency refers to the idea that "there are self-reinforcing processes in institutions that make institutional configurations, and hence their policies, difficult to change once a pattern have been established"[75]. EU was demonstrating its multilateralism by implementing UN SC sanctions in EU legal order but once sanctions against individuals came from UN SC, the EU had to think of a new way to adopt restrictive measures against individuals who were not associated with the state. The answer was 308 of Treaty establishing the European Community and yet the process of transferring UN SC sanctions to EU law changed very little, it still remained a two-tier procedure as mention earlier. This can be explained by a few extraordinary circumstances happening during that time period (early 2000's). Common position 2001/154/CFSP[76] designating Taliban and Bin Laden and his associates was based entirely on the UNSC Resolution 1333 (2000)[77], even the list of persons was the same which shows how EU was entirely trusting UN SC on drawing up that list. Another important step of UN influence in EU restrictions regime was 9/11 terrorism act which led to the extreme measures employed by UN which led to inclusion of more than 200 persons to the list with little to no evidence (being presented) of their cooperation with terrorists because of highly classified nature of the information about those persons[78]. Even with little evidence EU complied with these decisions which led to cases brought to EUCJ which opinion on the question of sufficiency of evidence presented will be examined later on[79]. Another clear example of rising of UN influence was UN SC resolution 1373[80] which was not a discrete action but was valid for indefinite amount of time and could be applied in numerous cases for which it was both endorsed and criticized by different scholars[81]. EU again adopted this resolution following the same procedure but the main questionable nature of these decisions was that EU not being part of UN (it is an international organization in its essence) was not required to adopt these regulations.

[75] Edited by Costa O. and Jørgensen K.E. The Influence of International Institutions on the EU, When Multilateralism hits Brussels. Basingstoke: Palgrave Macmillan, 2012.
[76] Council Common Position 2001/154/CFSP of 26 February 2001 concerning additional restrictive measures against the Taliban and amending Common Position 96/746/CFSP.
[77] UN SC resolution No. 1333(2000) of 19 December 2000 on the situation in Afghanistan
[78] Eckes C. EU counter-terrorist policies and fundamental rights: the case of individual sanctions. Oxford; New York: Oxford University Press, 2009. P. 25-26.
[79] Such as Yusuf and Al Barakaat International Foundation v Council and Commission. Case T-306/01, Judgment of the Court of First Instance of 21 September 2005; Kadi v Council and Commission. Case T‑315/01, Court of First Instance of the European Communities of 21 September 2005.
[80] UN SC resolution No. 1376(2001) of 9 November 2001 on the situation in Democratic Republic of the Congo.
[81] Eckes C. EU counter-terrorist policies and fundamental rights: the case of individual sanctions. Oxford; New York: Oxford University Press, 2009. P. 38-39.

But as it can be seen in practice EU adopted these regulations following the UNSC resolutions to the letter[82].

EUCJ however tried to remedy this practice in its case law. EUCJ's judgment in Joined Cases C-402/05 and C-415/05 was of constitutional significance regarding the relationship of UN and EU legal order, establishing the protection of human rights to those who are targeted by the measures taken in the ongoing "war against terror"[83]. This EUCJ judgment followed the ruling by the Court of First Instance in the cases of Yusuf and AI Barakaat International Foundation (Case T-306/01) and Kadi (T-315/01) in 2005. Mr Kadi and Al Barakaat International Foundation were among the persons and entities who had been placed on one of the EU lists of terrorist suspects whose assets should be frozen by the EU member states without delay, because they were included in the 1267 Committee list of suspected terrorists[84]. Both EJC and CFI agreed that EU is competent to adopt financial restrictions against individuals suspected of involvement in terrorist activities but CFI argued that if EU regulation which gives effect to UNSC resolution is examined it would amount to an evaluation of the UN lists of terrorist suspects and it should not fall under the CFI's jurisdiction. However EUCJ stance was firm and it drew a very important distinction between the UNSC resolution on the one hand, and the EU regulation that implements it on the other. The Courts can review the lawfulness of the later but it cannot examine the former. Furthermore, such a review of the EU implementing measure would not challenge the primacy of the UNSC resolution in international law. And defending the constitutional principles of EU it stated in 285 paragraph that "… international agreement cannot have the effect of prejudicing the constitutional principles of the Treaty establishing the European Community, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness which it is for the Court to review in the framework of the complete system of legal remedies established by the Treaty.". To support this thesis, the EUCJ recalled the judgment in the case Germany v Council[85] where the Court annulled a Community measure approving an international agreement on the basis that it had breached the principle of non-discrimination, without affecting the existence of the

[82] Council common position 2001/931/CFSP of 27 December 2001 and Council regulation No. 2580/2001 of 27 December 2001.
[83] Tzanou M. Case-note on Joined Cases C-402/05 P & C-415/05 P Yassin Abdullah Kadi & Al Barakaat International Foundation v. Council of European Union & Commission of European Communities// German Law Journal. 2009, Vol. 10.
[84] Edited by Costa O. and Jørgensen K.E. The Influence of International Institutions on the EU, When Multilateralism hits Brussels. Basingstoke: Palgrave Macmillan, 2012.
[85] Federal Republic of Germany v Council of the European Union. Case C-122/95, judgment of the Court of 10 March 1998.

international agreement[86]. As to sum up the influence of UN over the EU it can be said that at first it looked like UN had a far reaching practice in influencing EU regulation but later EUCJ cases while not demolishing this UN legal grip over EU legislation, EUCJ stated that implementing UN resolutions does not exclude a judicial review of EU acts concerning fundamental rights violations and by doing that it reaffirmed the autonomous character of EU's legal order. Following the same logic after the Treaty of Lisbon, Article 275 TFEU now gives EUCJ power to annul decisions adopting restrictive measures against individuals.

[86] Tzanou M. Case-note on Joined Cases C-402/05 P & C-415/05 P Yassin Abdullah Kadi & Al Barakaat International Foundation v. Council of European Union & Commission of European Communities// German Law Journal. 2009, Vol. 10.

2. THE EUCJ'S INFLUENCE OVER THE COURSE OF DEVELOPMENT OF RESTRICTIVE MEASURES

Along with new millennia the changes to the restrictive measures regime were soon following. The fight against terrorism was the hot topic as every nation wanted to assist the United States of America to find and sanction those responsible and to deter others from doing anything similar as the reaction of international community would be swift and of decisive character. The main legislation was that of UN which was adopted before 11 September 2001 in a form of UN SC resolution which imposed sanctions and were both targeted at fighting the terrorism and sanction those associated with the Al Qaeda – UN SC resolutions 1267 (1999)[87], 1333 (2000), 1363 (2001)[88], 1373 (2001) and various other with the most recent being 1988(2011) which deals with sanctions against the Taliban[89] and 1989(2011) which target the Al Qaeda and those associated with it[90]. The resulting targeted sanctions, better known in EU as restrictive measures, carried the same basic principles as UN SC resolutions on which they were based on – as an example could serve UN SC resolutions 1267 and 1333 which were implemented through EU legislation in a form of Common Position 2002/402/CFSP[91], EC regulations 337/2000[92] and 467/2001[93]. It was accepted to implement sanctions adopted by UN SC unilaterally as it was generally thought that UN Charter had become binding upon the EU as per the International Fruit Case[94] however that general understanding was challenged.

2.1. The change in understanding of the EU restrictive measures – Kadi I

[87] UN SC resolution No. 1267 (1999) of 15 October 1999 on the situation in Afghanistan.
[88] UN SC resolution No. 1363 (2001) of 30 July 2001 on the situation in Afghanistan, establishment of a mechanism to monitor the implementation of sanctions against the Taliban.
[89] UN SC resolution No. 1988(2011) of 17 June 2011 on establishment of a new Sanctions Committee focusing on the threat from those associated with the Taliban.
[90] UN SC resolution No. 1989(2011) of 17 June 2011 on expansion of the mandate of the Ombudsperson established by the resolution 1267 (1999) and the establishment of a new Al-Qaida sanctions list.
[91] Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP.
[92] Council Regulation (EC) No. 337/2000 of 14 February 2000 concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan.
[93] Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000.
[94] International Fruit Company NV and others v Produktschap voor Groenten en Fruit. Joined cases 21 to 24-72, judgment of the Court of 12 December 1972. Para. 18.

With introduction of targeted restrictive measures against natural and legal persons the biggest challenge was the (lack of) review mechanism which overly burdened persons concerned since cases were rejected by *jus cogens* because the EUCJ was thought to have no competence in matters of CFSP and restrictive measures were part of it[95]. The change to this practice came along with ever so famous among legal scholars Case C–402/05 P and C–415/05, P. Kadi and Al Barakaat International Foundation v. Council and Commission of 2008. Before this case there was no review mechanism, no reversing the sanctions by intervention from the non-state actor trying to prove it's not meant to be in the list against which/who the restrictive measures were used[96]. Based on this the changes to the practice of EUCJ could have been seen as coming beforehand – the autonomy of EU autonomy consists of 2 parts – first, the international law must not alter the balance of power between the EU and MSs, including the balance in EU institutions while the second is less relevant in this case because it concerns the treaties which replicate the EU rules in the areas it covers, the enforcement of judgments of judicial bodies established by a treaty to which the EU is a party[97]. According to the EUCJ practice there is a certain limit as to how EU and MSs too can extend their external relations – that is not to breach the autonomy of EU or fundamental rights[98]. In Kadi case the argument that "Community acted, according to the Court of First Instance, under circumscribed powers leaving it no autonomous discretion in their exercise, so that it could, in particular, neither directly alter the content of the resolutions at issue nor set up any mechanism capable of giving rise to such alteration"[99] and therefore the Court of First Instance (now the General Court) does not have competence to review the issue based on it becoming the review of UN SC resolution. However the (now) General Court reviewed the EU measures "… in the light of fundamental rights as protected by the Community legal order"[100] but did not find any breach regarding the fundamental rights[101]

[95] Kadi v Council and Commission. Case T‑315/01, judgment of the Court of First Instance of the European Communities of 21 September 2005;
Yusuf and Al Barakaat International Foundation v Council and Commission. Case T‑306/01, judgment of the Court of First Instance of 21 September 2005.
[96] Palchetti P.// edited by Cannizzaro E., Palchetti P., Ramses A. Wessel.International law as law of the European Union. Leiden; Boston (Mass.): Martinus Nijhoff Publishers, 2012. P. 380.
[97] Willem van Rossem// edited by Cannizzaro E., Palchetti P., Ramses A. Wessel.International law as law of the European Union. Leiden; Boston (Mass.): Martinus Nijhoff Publishers, 2012. P. 60-62.
[98] Ibid. P. 62.
[99] Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Case C–402/05 P and C–415/05 P, judgment of the Court (Grand Chamber) of 3 September 2008. Para. 84.
[100] Ibid. Para 85.
[101] Ibid. Para 102.

and "dismissed the pleas alleging breach of the right to effective judicial review and, as a result, the actions in their entirety"[102].

That would have been the end but EUCJ had radically different legal view than that of the General Court. While it confirms that it is not within its jurisdiction and competence to "… review the lawfulness of such a resolution adopted by an international body"[103] it should be bore in mind that it was said in Case T-184/95 Dorsch. Consult v Council and Commission [1998] ECR 11-667 that while UN Charter is bounding all MSs of EU it following that path is not by any means, as regards to public international law, bound to implement the UN SC resolutions in accordance with the Article 25 of the Charter of the United Nations[104]. While the EUCJ stipulates that even if the Charter binding the EU was within the realm of possibility it would extend only as far as secondary law [105] while primacy over the primary law not possible[106] establishing the constitutional EU framework based on rule of law[107] similar to that of MSs Constitutional clauses[108]. Having said that to review the lawfulness of EU act implementing international act is also within the realm of possibility[109] because inasmuch EU is based on rule of law neither the MSs or their institutions can avoid the review of lawfulness of their acts[110] as the "… review is a constitutional guarantee forming part of the very foundations of the Community"[111]. Since it was established that the act of EU implementing UN SC resolution can be reviewed the only thing left for the Court was to effectively rule whether the EU act contrary to primary EU law as far as fundamental rights were concerned. So contrary to the General Court the EUCJ ruled that it was possible, even obligatory to review the lawfulness of EU legal acts, even if they derived from international law. Having said that the paragraphs 292 and 293 gives credit to UN provides that "observance of the undertakings given in the context of the United Nations is required just as much in the sphere of the maintenance of international peace and security when the Community gives effect … to resolutions adopted by the

[102] Ibid. Para 106.
[103] Ibid. Para 287.
[104] Amato G., Ziller J. The European Constitution: cases and materials in EU and member states' law. Cheltenham; Northampton (Mass.): Edward Elgar, 2007. P. 269. Para 242.
[105] Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Case C–402/05 P and C–415/05 P, judgment of the Court (Grand Chamber) of 3 September 2008. Para 307.
[106] Ibid. Para 308.
[107] Ibid. Para 281, 285.
[108] The Constitution of the Republic of Lithuania // Valstybės Žinios. 1992, No. 33-1014. A. 106.
[109] Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Case C–402/05 P and C–415/05 P, judgment of the Court (Grand Chamber) of 3 September 2008. Para 286
[110] Ibid. Para 281.
[111] Ibid. Para 290.

Security Council under Chapter VII of the Charter of the United Nations"[112], which gives credit to UN as special actor in the sphere of the maintenance of international peace and security in turn making it possible to have an entirely different outcome as far as the possibility of review is concerned. The EUCJ however does not make any reference to Article 103 of UN charter which provides that "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail" leaving it the question as to how it could affect the MSs because all of them are members of UN and therefore, as it is stated in UN Charter, they should not have signed the EU Treaties giving rise to the legal dilemma at hand.

The EUCJ also considers the re-examination mechanism of UN SC and deems if as insufficient because it is not of judicial nature[113]. The further comments on UN SC being "still in essence diplomatic and intergovernmental, the persons or entities concerned having no real opportunity of asserting their rights and that committee taking its decisions by consensus, each of its members having a right of veto" are very important, since there is no denying that UN SC decision are adopted by common consensus by people who are more of diplomatic background than judicial. EUCJ follow up arguments are based on UN SC procedure for removal of actors from the list is far too elusive and give too little relevant information to the actors concerned. The Court specifies itself as the "true" judiciary body with power to assess "lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the contested regulation, are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations"[114]. Continuing it found that the rights of defense and in particular the right to be heard were no respected[115] and at the same time since "… no evidence of that kind may be the subject of investigation by the Community judicature, the Council has adduced no evidence to that effect"[116] giving the Court no other option other than to rule that the principle of effective judicial protection also had been infringed[117].

Effectively this meant that EUCJ was considering itself the "only" institution at the moment with power to review the restrictive measures imposed by EU even if they were adopted based on UN SC

[112] Ibid. Para 293.
[113] Ibid. Para 321-322
[114] Ibid. Para 326.
[115] Ibid. Para 349.
[116] Ibid. Para 350.
[117] Ibid. Para 352.

resolutions. By doing so it effectively says that UN SC procedure for reviewing the measures imposed is not enough as it is and only EUCJ is able to ascertain whether they were imposed justly. This also meant the ability to give the statement of reasons in UN SC had to be established accordingly in order to give reasons as to why the non-state actors were included in the list. Another reason was to give information to the EU because without evidence concerning the impositions of restrictive measures the Court would rule in favor of those whose rights are being restricted because without evidence or reasons there is no possibility to give negative ruling against the applicant. Another clause of vast importance was that at the time there was no review mechanism in place in EU since as mentioned earlier it was thought that EUCJ does not have jurisdiction in sphere of CFSP and based on that in any other similar case if the legal or natural persons against whom a restrictive measures were imposed were to take the case to EUCJ they would most likely face the outcome as in this case because there were still infringement of fundamental rights since it was not possible to create legislation to satisfy all creative in a short time span. The implications of this are similar to that of Solange I[118] in a sense that the EUCJ considers UN SC procedure of re-examination lacking in the judiciary aspect and not sufficient in protecting the fundamental rights[119]. Curious situation arises when one searches for analogy of ECtHR jurisprudence in judgment of 30 June 2005, Bosphorus Airways v. Ireland, Application No. 45036/98, where the EU was found to be sufficiently protecting the fundamental rights thus at least "equivalent to that for which the Convention provides"[120]. However concerning the competence of ECtHR to rule on matters concerning the Chapter VII of the UN Charter it found that the "complaints must be declared incompatible ratione personae with the provisions of the Convention"[121] by which it ruled that it has no competence in this sphere without taking account of its decision in Bosphorus case and thus deny itself of possibility to find actions contrary to the European Convention on Human Rights[122] when it concerns UN Charter's Chapter VII. This is contrary to the Kadi case where EUCJ came to indirectly assess whether UN SC decisions were in line with fundamental rights and as was already mentioned found that there were multiple breaches of fundamental rights in the way sanctions were imposed on persons concerned. However it does not lead to general conclusion that all sanctions

[118] Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel. Case 11-70, judgment of the Court of 17 December 1970.
[119] Kokott J. and Sobotta. C. The Kadi Case – Constitutional Core Values and International Law – Finding the Balance? // European Journal of International Law Year, 2012. Volume 23. P. 1018.
[120] Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland. Application No. 45036/9830, judgment of ECtHR, of 30 June 2005. Para 155, 166.
[121] Agim Behrami and Bekir Behrami against France and Ruzhdi Saramati against France, Germany and Norway. Application No. 71412/01 and 78166/01, judgment of ECtHR of 2 May 2007. Para 152.
[122] European Convention on Human Rights // Valstybės Žinios. 1995, No. 40-987.

imposed by UN SC and implemented through the EU Council are in breach of fundamental rights and it did leave way for the conclusion found in Solange II[123] to be possible in the future, if the protection of fundamental right in UN SC were improved.[124]

The aftermath of the Kadi case was that which could be expected – there were just seven cases in the whole period from 1999 to 2009 and 15 cases in 2010 while in 2011 alone it rose up to 82 concerning the targeted measures.[125] While cases piled up en masse the outcome was surely not what they could have expected – only 3 of those who brought cases to the Court won in 2011.[126] The inevitability of what is known Kadi II was sure to follow. The General Court in 2010 already gave judgment on case Case T-85/09, *Yassin Abdullah Kadi v European Commission*. Following the judgment of Kadi I, the EU Commission adopted, under the implementing powers conferred upon it by Regulation 8S1/2002, a new decision maintaining the listing of Mr. Yassin Abdullah Kadi together with a statement of reasons reproducing the "summary of reasons" provided by the UN Security Council Al-Qaida Sanctions Committee. Mr. Yassin Abdullah Kadi challenged that decision before the EU General Court, which upheld his claim on the basis that the summary of reasons for listing was insufficient and the General Court accepted that[127], however the consequences were slim as it acknowledged that it "falls not to it but to the Court of Justice to reverse precedent"[128] put forward by the EUCJ since "Court of Justice was sitting in Grand Chamber formation and clearly intended to deliver a judgment establishing certain principles"[129] and so following the established precedent the General Court delivered judgment which could be expected.

2.2. Following the steps of Kadi I – the Kadi II case

In July 18 2013 the judgment in Joined Cases C‑584/10 P, C‑593/10 P and C‑595/10 P (Kadi II) followed which was carried out by the Grand Chamber. By the appeals in Kadi II, the EUCJ was requested to reconsider its conclusion in Kadi I that acts of the EU which implement binding

[123] Solange II summary// http://www.ecln.net/documents/Decisions-Germany/summary-solange_ii.pdf ; last visited: 11/12/2013
[124] Kokott J. and Sobotta. C. The Kadi Case – Constitutional Core Values and International Law – Finding the Balance? // European Journal of International Law Year, 2012. Volume 23. P. 1019.
[125] Rettman A. Arab Spring villains bombard EU with lawsuits// http://euobserver.com/foreign/114725; last visited: 11/17/2013.
[126] Ibid.
[127] Yassin Abdullah Kadi v European Commission. Case T-85/09, judgment of the General Court (Seventh Chamber) of 30 September 2010. Para 157, 177.
[128] Ibid. Para 123.
[129] Ibid. Para 121.

decisions of the UN Security Council should not benefit from an immunity of review by the EU Courts[130] or at least to rule that the General Court had applied an excessively strict standard of judicial review concerning the statement of reasons about Mr. Kadi's association with Al-Qaida. The EUCJ had clearly rejected the possibility of altering the judgment reached in Kadi I that acts adopted by the EU to implement binding decisions of the UN Security Council cannot benefit from an immunity from review by the EU Courts while recalling that it had already set out in Kadi I the circumstances which led it to reach that conclusion and that "there has been no change in those factors which could justify reconsideration of that position". So essentially it said that the changes carried out by the UN SC, namely the "narrative summary" which provides the "basis for listing according to relevant resolutions adopted by the Security Council as well as, as appropriate, any other relevant information"[131] as well as introduction of Ombudsperson who is responsible for collecting information relevant to the delisting request[132] (it must be borne in mind that the decision of UN SC must be unanimous on delisting so one states decision still blocks the delisting procedure) were insufficient as "the procedure for delisting and ex officio re-examination at UN level do not provide to the person whose name is listed on the Sanctions Committee Consolidated List and, subsequently, in Annex I to Regulation No. 881/2002, the guarantee of effective judicial protection"[133] and refers to the European Court of Human Rights judgment of 12 September 2012, Nada v. Switzerland No 10593/08 which made the same findings as well as to its previous judgment in Case C-239/12 P, Abdulrahim v Council and Commission, explaining that the "the essence of effective judicial protection" is different than that provided by the UN SC as it is now with possibility of compensation for the non-material harm he had to suffer throughout the imposition of measures[134]. When explaining the EU law relation with Article 103 of the UN Charter, which provides that in the event of a conflict between the obligations of the Member countries of the UN under the Charter and their obligations under any other international agreement, their obligations under the UN Charter prevail, the EUCJ practically re-stated its conclusion in Kadi I as well as judgment of 3 December 2009 in joined Cases C-399/06 P and C-403/06 P, Nassau and

[130] Ibid. Para 111.
[131] Narrative summaries of reasons for listing// http://www.un.org/sc/committees/1267/narrative.shtml; last visited: 11/20/2013
[132] UN SC resolution No. 1904 (2009) of 17 December 2009 on threats to international peace and security caused by terrorist acts
[133] European Commission and Others v Yassin Abdullah Kadi. Joined Cases C‑584/10 P, C‑593/10 P and C‑595/10 P, judgment of the Court (Grand Chamber) of 18 July 2013. Para 133.
[134] Ibid. Para. 134.

Ayadi.[135], that "without the primacy of a Security Council resolution at the international level thereby being called into question, the requirement that the European Union institutions should pay due regard to the institutions of the United Nations must not result in there being no review of the lawfulness of such European Union measures, in the light of the fundamental rights which are an integral part of the general principles of European Union law."[136] The EUCJ, confirming the preventive nature of the restrictive measures at issue[137], recalled the case law where the fundamental rights based on which the EU Courts have to review the lawfulness of all EU acts include respect for the rights of the defense and the right to effective judicial protection[138]. EUCJ recalled that respect for the rights of the defense, as mentioned in Article 41 (2) of the Charter of Fundamental Rights of the EU "includes the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality"[139]. Equally, the EUCJ recalled case law that the right to effective judicial protection, as mentioned in Article 47 of the Charter of Fundamental Rights of the EU[140], requires that "the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based … so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question".[141] EUCJ also noted that Article 52(1) of the Charter of Fundamental Rights of the EU nevertheless allows limitations on the exercise of the rights established by it – "subject to the conditions that the limitation concerned respects the essence of the fundamental right in question and, subject to the principle of proportionality, that it is necessary and genuinely meets objectives of general interest recognized by the European Union".[142] Applying these conditions to the restrictive measures regime at issue, EUCJ held that when decision to list a person or entity is taken by the UN SC, the competent EU institution must list that person or entity in Annex I to Regulation 881/2002[143]. The very least party concerned must be provided with is the summary of reasons given by UN Sanctions Committee[144]. The EUCJ then set out the role of

[135] Faraj Hassan v Council of the European Union and European Commission (C-399/06 P) and Chafiq Ayadi v Council of the European Union (C-403/06 P). Joined cases C-399/06 P and C-403/06 P., judgment of the Court of 3 December 2009.
[136] Ibid. Para 67.
[137] Ibid. Para. 132.
[138] Ibid. Para 97-99.
[139] Ibid. Para 99.
[140] Charter of Fundamental Rights of the European Union, 2012/C 326/02. Official Journal C 326.
[141] Ibid. Para 100.
[142] Ibid. Para 101.
[143] Ibid. Para 107.
[144] Ibid. Para 111.

the "competent EU authority" – when listed party provides comments and exculpatory evidence, that it "is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments"[145]. To conduct this assessment the competent EU authority may need to seek the assistance of the UN SC in order to ascertain whether the evidence given by the UN SC to the organs of EU still stands strong[146]. The concrete standard applicable to the intensity of judicial review by EU Courts was left unclear following the Kadi I judgment ("in principle the full review"[147]). This question is resolved in the Kadi II judgment – the Courts must review not only whether the rules of procedure and competence – including the legal basis and obligation to state the reasons were observed, but also to verify whether those reasons, or at least one of them which is considered sufficient in itself to support the listing decision, is substantiated[148] for which the Court stated that "it is for the Courts of the European Union, in order to carry out that examination, to request the competent European Union authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination"[149] followed by the argument that there is no reason for all the information to be presented only that which "should support the reasons relied on against the person concerned"[150]. While making allowance for the competent authority to claim that overriding considerations relating to the security of the EU or of its MS or the conduct of international relations may preclude the disclosure of some information or evidence it is still the duty of the Court to carry out judicial review and the "secrecy or confidentiality of that information or evidence is no valid objection".[151] The Court stated that for this purpose it is for the EU Courts to determine whether the grounds invoked by the relevant authority to preclude the disclosure of the information are well founded.[152] If the EU Court considers that the information or evidence should be disclosed they must give the EU authority the opportunity to disclose it to the listed person. If the EU authority does not permit the disclosure of the information, the EU Court can examine the lawfulness of the contested measures solely on the basis of the material which was disclosed[153]. If,

[145] Ibid. Para 114.
[146] Ibid. Para 115.
[147] Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Case C–402/05 P and C–415/05 P, judgment of the Court (Grand Chamber) of 3 September 2008. Para. 326.
[148] European Commission and Others v Yassin Abdullah Kadi. Joined Cases C‑584/10 P, C‑593/10 P and C‑595/10 P, judgment of the Court (Grand Chamber) of 18 July 2013. Para. 119.
[149] Ibid. Para 120.
[150] Ibid. Para 122.
[151] Ibid. Para 122.
[152] Ibid. Para 126.
[153] Ibid. Para 127.

however, the EU Court considers that the grounds invoked to preclude disclosure are well founded it may have to consider possibilities such as disclosing a summary outlining the content of the information or evidence.[154] However it is noteworthy that EUCJ did not expressly mention the rules and procedures on handling classified information as provided in the Council's Security regulations established by Council decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information[155], nor did it indicate whether it considered that it is necessary for this purpose to amend the Rules of Procedure of the EU General Court[156] and in particular Article 67 (3) which provides that "the General Court shall take into consideration only those documents which have been made available to the lawyers and agents of the parties and on which they have been given an opportunity of expressing their views" thus preventing the Court from taking into account documents which are not disclosed to the lawyers of parties concerned. And so the EUCJ concluded that in any event the EU Courts themselves must be provided with evidence or information to substantiate at least one of the reasons stated in the grounds for listing, holding that "If the competent European Union authority finds itself unable to comply with the request by the Courts of the European Union, it is then the duty of those Courts to base their decision solely on the material which has been disclosed to them"[157] and the single substantiated reason would be enough to not annul the listing. However if not a single reason is substantiated "the Courts of the European Union will annul the contested decision"[158]. Applying the above standards to the case at hand, EUCJ found that although one of the reasons mentioned in the statement of reasons concerning Mr. Kadi was not sufficiently detailed[159] the other four reasons mentioned were sufficiently detailed and specific[160]. EUCJ however also found that no evidence or information had been produced to substantiate the accuracy of what was alleged in those other reasons, while Mr. Kadi submitted detailed rebuttals. The EUCJ therefore concluded that "none of the allegations presented against Mr Kadi in the summary provided by the Sanctions Committee are such as to justify the adoption, at European Union level, of restrictive measures against him, either because the statement of reasons is insufficient, or because information or evidence which might substantiate the reason concerned, in

[154] Ibid. Para 128-129.
[155] Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information.
[156] Rules of procedure of the Court of First Instance of the European Communities of 2 May 1991. Official Journal L 136.
[157] Ibid. Para 123.
[158] Ibid. Para 130.
[159] Ibid. Para 141.
[160] Ibid. Para 142-149.

the face of detailed rebuttals submitted by the party concerned, is lacking."[161] Therefore the EUCJ acknowledged the fulfillment of duty to give reasons to the applicant but it found that none of the reasons were substantiated by the evidence therefore concluded that contested regulation annulment in so far as it concerns Mr. Kadi, is well founded on legal grounds[162].

2.3. Implications after Kadi I and Kadi II

Thus with the EUCJ reaffirming the precedent established in Kadi I it expanded the reasons in Kadi II while dismissing arguments by the Council and MSs it established that it is not calling the primacy of UN SC resolutions in question, therefore it by no means is an obstacle to review the lawfulness of restrictive measures, in the light of the fundamental rights which are an integral part of the general principles of European Union law. This however as mentioned gives a curious situation – the EU does not suffer since it is not a member of UN, the MSs however have to follow the UN SC resolutions and EU Courts decisions but at a situation like this, to do both at the same time looks rather impossible without breaching either one. Yet another implication of EU Courts is the situation at hand is that much curious – from the looks of it, inside the EU there is different implementation of UN SC resolutions than the rest of the world which just gives rise a situation where EU is disregarding the UN SC resolutions which in turn, considering movement inside the UN about how to please the EU Courts (the establishment of Ombudsperson is one of examples) gives rise to thought that Solange II decision is still a possibility[163] if the UN SC follows through the requirements established the EUCJ. This analysis is unique in a way that is shows just how EU is influencing the development of UN SC and as it was shown in the section 1 just how influential UN was throughout the decades on EU sanction regime development but now the trend is turning the other way around and EU is influencing the development and as seen from the facts of the cases – definitely for the better. It is the EUCJ decision which could be seen as influencing the development in UNSC because the problems could be predicted since it does not take a legal expert to notice that if it is so hard to challenge the sanctions imposed, if there is a need of consensus among the Member States of UN in order to delist persons, we have to notice a regulation which collide with fundamental rights. Taking all that's been said and taking into consideration arguments presented by

[161] Ibid. Para 163.
[162] Ibid. Para 164.
[163] Ibid. Para 134.

the EUCJ, there is a little chance that any time soon will UN be able to improve the procedure to such an extent as to satisfy the EUCJ as to use the Solange principles because the best, if not the only way it will be possible is if UN established a body of judicial character, which would be able to carry out a judicial procedure therefore guaranteeing the proper protection of rights of those targeted by UN SC sanction regime.

3. NATIONAL IMPLEMENTATION OF RESTRICTIVE MEASURES

3.1. Implementation, enforcement and monitoring of EU restrictive measures – the fall

While moving away from sanctions against states to targeted sanctions was welcomed change in many aspects but the difficulties arose in many fields, including international humanitarian law[164]. The procedures concerning implementation of targeted measures were still carried out in the same way in EU – no to little changes were implemented in CFSP in order to accommodate restrictive measures against non-state entities. Following this it is obvious that the important part of what gives rise to sanction regime – namely the enforcement – was left in the hands of MSs.

The adoption of restrictive measures is a process which in theory rests within the competence of the Council since the dawn of the EU and even after the Lisbon Treaty (problematic aspects of Article 75 of TFEU were overviewed but since it is not within the scope of this thesis, possible implications will not go any further). When a decision to adopt restrictive measures is established in accordance with Chapter 2 of Title V of the Treaty on European Union concerning the CFSP and measures are of economic and financial nature, then, according to Article 215 of TFEU, Councils regulation is required in order to implement the restrictive measures concerned but the EU Parliament must be informed about adopted restrictive measures. Other restrictive measures – travel restrictions, arms embargoes and diplomatic measures do not need any further action by the EU other than the decision of EU Council[165] and it is on MSs to implement these measures. So it is that the movement of people from and to EU countries is disciplined by national governments, responsible for monitoring their borders and it is the MSs duty to ensure that the decisions of the Council are duly implemented. While the adoption of sanctions was changed few times over the course of EU history the second step – the implementation of restrictive measures was left the same throughout the history of EU – in practice implementation of restrictive measures falls on MSs even if these measures are within the exclusive competence of EU (such as financial and trade restrictive measures). As an example of previous statement we could take parliamentary questions which both are answered in a manner this thesis is seeking – "Member States are not, however, obliged to

[164] Gebert K. Shooting in the dark? EU sanctions policies// http://ecfr.eu/page/-/ECFR71_SANCTIONS_BRIEF_AW.pdf ; last visited: 11/12/20013.
[165] Giumelli F. How EU sanctions work: a new narrative// Chaillot Paper. 13 May 2013, No.129. P. 11.

provide precise information on how an infringement or offence is sanctioned"[166] – which leads to a a conclusion that it is solely within the responsibility of the MSs to enforce restrictive measures of EU. Keeping that in mind the uniformity suffers because implementation of most restrictive measures lies within the EU competence (with exceptions on arms embargoes and travel restrictions[167]). While keeping the legislation uniform should not be a problem, because MSs have documents outlining the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy"[168] and "EU Best Practices for the effective implementation of restrictive measures"[169] to follow, but just as the long standing EU Commission legal battle over the implementation of EU directives into national law shows, it is more of a wishful thinking that implementation goes without interference of EU bodies.

The EU Council decisions in particular spheres (arms embargoes and travel restrictions) pose a particular threat because each and every MSs could implement measures differently because documents already mentioned on implementation of restrictive measures are only recommendatory.

Another problem lies within the responsibility of MSs to properly respect the restrictive measures imposed – there is no monitoring whatsoever on what happens after the EU Council imposes restriction, which is another problem since discretion of implementation of some restrictive measures left is to MSs while other measures also require input from government institutions. Directly associated with it is the success of EU restrictive measures are the MSs as it is not usually the MSs (governments) themselves which carry out the restrictive measures but it is the natural and legal persons which follow these restrictive measures imposed by the EU Council. Having no legislation in place which could be impose sanctions or no possibility to enforce existing legislation on people of the MSs concerned it is not likely that anyone would carry out restrictive measures of EU which are imposed against third-state actors which usually have direct economic ties with citizens of EU. With no obligatory monitoring being carried out there is no possible way to learn the way restrictive measures are implemented and imposed, whether they are being evaded by EU actors or third-state actors and if they are – how the measures are circumvented by non-state actors. While it matters for the sake of statistics another benefit could be drawn by sharing the information

[166] Parliamentary questions// http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-000372&language=EN and to the same extent Parliamentary questions// http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-004068&language=LT; last visited: 18/11/2013.
[167] Sanctions or restrictive measures// http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf; last visited: 11/20/2013.
[168] Latest amendment being No. 9068/13 of 30 April 2013.
[169] Latest amendment being No. 8666/1/08 of 24 April 2008

concerning the information about how measures are circumvented. So even if there is a legal basis for restrictive measures, even if they are adopted by the EU Council the stage of implementation and monitoring of what happens after the "law" rests entirely on hands of MSs and with no mechanism there is only good will left instead of the rule of law as to how to implement restrictive measures adopted the EU. With no mechanism there is little initiative for MSs to properly (there is no mechanism to express what "properly" even means and those which give insight are only of recommendatory value) implement restrictive measures since even if only one MS fails to properly implement restrictive measures (and since targeted measures are the common practice today) there are only few ways as to how it would be possible to restrict movement of persons, goods or finances once they enter the internal market of EU. Another difficulty arrives along with no common implementation practice as it is very difficult to correctly implement some type of restrictive measures, in particular the financial restrictions, since delay of few days between implementation of different MSs could mean elusive effectiveness of said measures[170] apart from being a message that EU measures are very easy to evade. There is no study as in how fast or even how the restrictive measures are implemented in MSs since there is no obligation on MSs to expose such information while the financial measures implementation depends on the MSs cooperating with the economic operators (including financial and credit institutions) on enforcing measures concerned[171]. The situation at the moment is concerning – while EU has exclusive competence[172] over the restrictive measures, the MSs have "exclusive competence" over the implementation and monitoring leading to twofold situation – in one part EU is being viewed as unified because restrictive measures are adopted by the Council in sphere of CFSP, but on the other hand it is obvious that MSs are free to choose how to implement those sanctions and have no duty to monitor them based on rule of law causing the fragmentation in restrictive measures regime.

Based on elaborations presented the possibility of resolving this situation in the future lies in the hands of EU. The establishment of a body which could be monitoring the MSs implementation and execution of sanctions concerned may be required in order to achieve the uniform application of restrictive measures in EU because as of now the MSs have no obligation to report on precise legislation and sanctions for disobeying it concerning the restrictive measures regime. This institution, managed by the EU, should be able to collect the information concerned about the

[170] Articles 258-260 of TFEU defines the procedure of enforcing MSs who failed in fulfilling their obligations and the first phase of communication between MS and Commission can take up to few months.
[171] Sanctions or restrictive measures// http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf; last visited: 20/11/2013.
[172] Chapter 2 of Title V of the TEU.

national legislation concerning the implementation of restrictive measures in every MSs and therefore the experts adept in every language of MSs will have to employed in order to efficiently carry out this task since little legislation is translated to other languages and it is both costly and difficult to do. Such institution could be able to see the trends in MSs, for better or for worse, and to make suggestions to MSs which's legislation have known shortcomings to improve their legal practice. Another duty of such body should be concerned with giving the notices to MSs lagging behind in implementing the restrictive measures themselves or failing to execute them properly, without affecting the sovereignty of MSs. Such institution should also store information and make it publicly available about the legislation of MSs adopted in accordance with the restrictive measures imposed by the EU. Establishment of such institution should be the next step in evolution of restrictive measures regime of EU because now there is little possibility to track legislation of different MSs since there is no one body carrying out that duty.

3.2. Lithuania's practice in implementing restrictive measures

While it is the EU duty to adopt restrictive measures it falls upon the MSs to implement some of those restrictive measures into their legal system and it can be quite difficult for individual MSs to follow the legislation adopted by the Council. The MSs of the EU have commitments to follow and to do so may be a burden on the legislative bodies of the country, which may not always go toe to toe with the newest trends and practices of the halls of Brussels.

While United Nations Security Council adopted resolution 1373(2001) laying out wide-ranging strategies to combat terrorism and in particular the fight against the financing of terrorism is by no means new, it gave way to EU legislation which is known under the name of Council common position of 27 December 2001, 2001/931/CFSP[173], on the application of specific measures to combat terrorism. Before we begin the implications of these legislative acts it is important to overview the notion these acts establish.

The UN SC resolution 1373(2001) was adopted without annexed list of persons which was present in its counterparts (UN SC resolutions 1267, 1333, 1390[174]) and by doing so it marked a change,

[173] Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism. Para. (2).
[174] UN SC resolution No. 1390 (2002) of 16 January 2002 concerning the situation in Afghanistan and terrorism.

viewed by some in negative while other viewed it as a positive change[175], which created the remarkable response from otherwise rather passive community of UN and EU was not an exception[176].

2001/931/CFSP is Council common position of 27 December 2001 on the application of specific measures to combat terrorism and it had to be implemented to Lithuania's legal system since Council common position does not have a direct effect, in turn making it the duty of the MSs to implement these common position imposing restrictive measures. While Lithuania did implement Council common position in 2008 by adopting Republic of Lithuania Government Decree No. 113 of 6 February 2008 "On the measures implementing international sanctions in Republic of Lithuania, provided by European Union common position 2001/930/CFSP of 27 December 2001 on the application of specific measures to combat terrorism" however it did not come to change it according to changes happening to the common position and the EU itself.

The following analysis of the decree No. 113 and EU legal acts is an opinion which is based on accumulated information and experience gained working in the Lithuania's Ministry of Foreign Affairs and does not, in any way, reflect the position of the Ministry of Foreign Affairs on this matter. Originally the common position 2001/931/CFSP was adopted according to previous revision of the Treaty of European Union, which was in force prior to the Lisbon treaty, according to articles 15 and 34 of TEU. Article 15 of TEU (2001) stated – "The Council shall adopt common positions. Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions" while the relevant part of article 34 of TEU (2001) empowered Council to "adopt common positions defining the approach of the Union to a particular matter" and since common position did not had a direct effect it required implementation by the MSs. That is where the problems in differentiation between EU and Lithuania's legal bodies practice begin because secondary legislation of EU, in particular directives and common positions, leave a lot of room for maneuvering as to how there documents can be implemented in national legislation. However it is likely to pose legal problems for other MSs as well since national governments also can follow their own national legislation guidelines when implementing EU restrictive measures because just as it is the case with EU directives – the MSs have discretion when implementing these legal acts.

[175] Eckes C. EU counter-terrorist policies and fundamental rights: the case of individual sanctions. Oxford; New York: Oxford University Press, 2009. P. 38-39.
[176] Ibid. P. 43.

Based on articles 2 and 3 of the "Law of implementation of economic and the other international sanctions" (Žin., 2004, No. 68-2369), in accordance with Council common position 2001/930/CFSP of 27 December 2001 on combating terrorism, implementing Council common position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism and Councils common position 2007/448/CFSP updating Common position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common positions 2006/380/CFSP and 2006/1011/CFSP, Government of Republic of Lithuania adopted decree No. 113 in order to confirm the list of persons, groups and entities affiliated with the acts of terrorism and restrict rights of those listed to govern, use and dispose of financial funds and other assets[177]. All would be fine, however there are regular amendments carried out concerning Council common positions and Council common position 2001/931/CFSP of 27 December 2001 is no exception:

– Council common position 2007/871/CFSP[178] (updating Common position 2001/931/CFSP) of 20 December 2007 repealing common position 2001/931/CFSP;

– Council common position 2007/871/CFSP was repealed by Council common position 2008/586/CFSP[179] (updating Common position 2001/931/CFSP) of 15 July 2008;

– Council common position 2008/959/CFSP[180] (updating Common position 2001/931/CFSP) amended Council common position 2008/586/CFSP

– Council common position 2009/67/CFSP[181] (updating Common position 2001/931/CFSP) of 26 January 2009 repealing Council common position 2008/586/CFSP

– Council common position 2009/468/CFSP[182] of 15 June 2009 (updating Common position 2001/931/CFSP) repealing Council common position 2009/67/CFSP

The list would have gone for a long time and for every update to the Council common position 2001/931/CFSP there should have been an decree to Lithuanian equivalent in order to the level legal

[177] Government of the Republic of Lithuania decree No. 113 of 6 February 2008 "Dėl priemonių įgyvendinant Lietuvos Respublikoje tarptautines sankcijas, numatytas 2001 m. gruodžio 27 d. Europos Sąjungos Tarybos bendrojoje pozicijoje 2001/930/BUSP dėl kovos su terorizmu"// Valstybės žinios. 2008, No. 20-737. A. 2.
[178] Council Common Position 2007/871/CFSP of 20 December 2007 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2007/448/CFSP
[179] Council Common Position 2008/586/CFSP of 15 July 2008 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2007/871/CFSP
[180] Council Common Position 2008/959/CFSP of 16 December 2008 amending Common Position 2008/586/CFSP updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism
[181] Council Common Position 2009/67/CFSP of 26 January 2009 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2008/586/CFSP
[182] Council Common Position 2009/468/CFSP of 15 June 2009 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2009/67/CFSP

regulations in EU and Lithuania but there is still no amendment made to the original decree of 6 February 2008 to this day. The Treaty of Lisbon entry into force on 1 of December 2009 marking a change in our analysis as the common position morphed itself to Council decision which followed – Council common position 2009/468/CFSP of 15 June 2009 was the last common position amending common position 2001/931/CFSP and the next step was the Council *Decision* 2009/1004/CFSP[183] of 22 December 2009 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of common position 2001/931/CFSP did not repealed Council common position 2009/468/CFSP of 15 June 2009 as a whole so part of it was still in force, it was repealed insofar as it concerns persons, groups and entities to which Articles 2, 3 and 4 of Common position 2001/931/CFSP apply[184]. Council common position 2009/468/CFSP of 15 June 2009 still listed persons, groups and entities (but now only EU internals were relevant[185]) to which only Article 4 of Common position 2001/931/CFSP applied[186]. Article 4 of Common position 2001/931/CFSP was concerned with internal MSs police and judicial cooperation as it stated that "*Member States shall, through police and judicial cooperation in criminal matters within the framework of Title VI of the Treaty on European Union, afford each other the widest possible assistance in preventing and combating terrorist acts. To that end they shall, with respect to enquiries and proceedings conducted by their authorities in respect of any of the persons, groups and entities listed in the Annex, fully exploit, upon request, their existing powers in accordance with acts of the European Union and other international agreements, arrangements and conventions which are binding upon Member States*." The obvious question rise as to what maintains the list of persons in Council common position 2009/468/CFSP of 15 June 2009 up to date and that was left due to a working party which replaces the informal consultation mechanism among MSs that has been in place since 2001, the "Working Party on implementation of Common position 2001/931/CFSP on the application of specific measures to combat terrorism" (CP 931 Working Party) was established to work on proposals for listings and de-listings and with preparing the regular review of the list by the Council as foreseen in Article 1(6) of Common position 2001/931/CFSP.[187]

[183] Council Decision 2009/1004/CFSP of 22 December 2009 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism.
[184] Ibid. A. 2.
[185] The EU list of persons, groups and entities subject to specific measures to combat terrorism// http://www.consilium.europa.eu/uedocs/cmsUpload/091222_EU_terrorist_list_EN-FINAL.PDF; last visited 22/11/2013
[186] Ibid.
[187] The EU list of persons, groups and entities subject to specific measures to combat terrorism http://www.consilium.europa.eu/uedocs/NewsWord/en/jha/138098.doc; last visited: 11/20/2013.

Persons, groups and entities can be included on the list on the basis of proposals submitted by MSs or third States which should include all necessary information in order to support the restrictions while initiating the proposal[188]. The information concerning the recipients of restrictive measures is then spread through the delegations of the MSs for discussion arising the CP 931 Working Party[189]. After examining the information presented the CP 931 Working Party will conclude about either the information meets the criteria set out in Common position 2001/931/CFSP and it will then make recommendations based on its findings to either list or delist the persons, groups and entities concerned which will be basis to the Council to adopt the necessary legislation.[190]

With establishment of working party CP 931 2001/931/CFSP persons, groups and entities listed under 2001/931/CFSP were able to get the statement of reasons which made "clear"[191] (it could be referred to as subjective) how criteria for common position had been met. The statement of reasons consisted of following elements:

"a) Terrorist act or acts committed with reference to Article 1(3);

b) Nature or identification of the competent authority or authorities which took a decision in respect of the person or entity concerned;

c) Type of decision taken with reference to Article 1(4);

d) If not otherwise clear, whether the individual, group or entity falls within Article 2(3) (i), (ii), (iii) or (iv) of Council Regulation (EC) No 2580/2001."[192]

However the practice was still criticized as having fundamental problems[193]. The Treaty of Lisbon entry into force changed little in that respect but innovation concerning the direct effect of Council decisions following the TEU was very important as according to Chapter 2 of Title V of TEU going by which if the Council decision adopted in sphere of common foreign and security policy if sufficiently clear, definite, absolute etc. are of direct effect and the MSs do not have to implement it by adopting national legislation. This leads to a situation in which Lithuania does not need to

[188] Ibid.
[189] Ibid.
[190] Ibid.
[191] Council document No. 10826/1/07 of 28 June 2007, Fight against the financing of terrorism – implementation of Common Position 2001/931/CFSP. P. 10. Para. 18.
[192] Ibid. P. 10. Para. 18.
[193] Hayes B. Statewatch analysis "Terrorist lists" still above the law. P. 5-6.// http://www.statewatch.org/news/2007/aug/proscription.pdf; last visited: 22/11/2013

implement Council Decision 2009/1004/CFSP of 22 December 2009 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of common position 2001/931/CFSP or sequential amendments to it, however the Council common position 2009/468/CFSP of 15 June 2009 is still in force and it needs to be implemented by the national bodies.

The CP 931 Working Party still regularly holds regular meeting over the updates to the list of persons, groups and entities to which only article 4 of the Council common position 2001/931/CFSP applies and as far as the results of these meetings are available to be found there are no changes being made to the original list[194] as set out in the Annex to the Council common position 2009/468/CFSP of 15 June 2009. In accordance with that had been presented Council common position 2009/468/CFSP of 15 June 2009 should be implemented in Lithuanian legal system since it is still duty of all MSs however it being only a part of broader Council common position 2001/931/CFSP it is needed to analyze other legal acts which amend the latter.

The first Council decision going by the catchy name 2009/1004/CFSP was only the first of long series of decisions which were repealed many times over the course of only 3 years (orderly list is – 2009/1004/CFSP, 2010/386/CFSP[195], 2011/430/CFSP[196], 2011/872/CFSP[197], 2012/333/CFSP[198], 2012/765/CFSP[199], 2013/395/CFSP[200]) with the most recent being "Council decision 2013/395/CFSP of 25 July 2013 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common position 2001/931/CFSP on the application of specific

[194] The EU list of persons, groups and entities subject to specific measures to combat terrorism// http://www.consilium.europa.eu/uedocs/cmsUpload/091222_EU_terrorist_list_EN-FINAL.PDF; last visited 22/11/2013. P. 5;
Outcome of Proceedings of the CP 931 Working Party meeting held on 27 October 2009// http://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vi9wb0sx8xzf; last visited: 23/11/2013.
[195] Council Decision 2010/386/CFSP of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism.
[196] Council Decision 2011/430/CFSP of 18 July 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism.
[197] Council Decision 2011/872/CFSP of 22 December 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2011/430/CFSP.
[198] Council Decision 2012/333/CFSP of 25 June 2012 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2011/872/CFSP.
[199] Council Decision 2012/765/CFSP of 10 December 2012 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2012/333/CFSP.
[200] Council Decision 2013/395/CFSP of 25 July 2013 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2012/765/CFSP.

measures to combat terrorism, and repealing Decision 2012/765/CFSP"[201]. As other Council decisions in CFSP these all were of direct effect so there is no need to adopt national legislation (articles 2, 3 and 4 of Common position 2001/931/CFSP).

In order to implement updates carried out to Council common position 2001/931/CFSP Council adopted regulation on 27 of December 2001 No. 2580/2001[202] on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. Regulation was amended many times over[203] with the newest amendment being Council Implementing Regulation No. 1169/2012[204] of 10 December 2012 implementing Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 542/2012. Part of Council common position 2001/931/CFSP is being implemented (articles 2 and 3 to be precise) through both the Council regulation No. 2580/2001 and those amending it (at this time Council Implementing Regulation No. 1169/2012).

Viewed from the perspective of Council decisions and regulations, decree of the Republic of Lithuania Government No. 113 of 6 February 2008 "On the measures implementing international sanctions in Republic of Lithuania, provided by European Union common position 2001/930/BUSP of 27 December 2001 on the application of specific measures to combat terrorism" is flawed, that is certain, however the paths to correct are few and choices need to be made.

The Council regulation 27 No. 2580/2001 of December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism with its newest amendment being Council Implementing Regulation No. 1169/2012 of 10 December 2012 have very similar list to Council decision 2013/395/CFSP of 25 July 2013 but there are differences (Regulation No. 1169/2012 does not list "Hizballah Military Wing" (a.k.a. "Hezbollah Military Wing", a.k.a. "Hizbullah Military Wing", a.k.a. "Hizbollah Military Wing", a.k.a. "Hezballah Military Wing", a.k.a. "Hisbollah Military Wing", a.k.a. "Hizbu'llah Military Wing" a.k.a. "Hizb

[201] Ibid.
[202] Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.
[203] Amendments list// http://eur-lex.europa.eu/Notice.do?val=262026:cs&lang=en&list=508898:cs,451066:cs,262026:cs,249116:cs,&pos=3&page=1&nbl=4&pgs=10&hwords=; last visited: 11/21/2013.
[204] Council Implementing Regulation (EU) No. 1169/2012 of 10 December 2012 implementing Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 542/2012.

Allah Military Wing", a.k.a. "Jihad Council" (and all units reporting to it, including the External Security Organisation))[205] so Council decision 2013/395/CFSP of 25 July 2013 needs to be regarded and accordingly, freezing of the funds and other financial assets or economic resources of "Hizballah Military Wing" needs to be carried according to the national legislation, in this case it is the decree No. 113 implementing common position 2001/930/CFSP.

There is a possibility to either specify an exact Council decision which is to be followed (at the moment the latest Council decision being 2013/395/CFSP of 25 July 2013) and to change the decree accordingly each time previous Council decision is repealed or following the notion that the Council decisions in CFSP sphere do not need to be implemented by the MSs and specifying in the decree needs, as far as the list of persons, groups and entities subject to Articles 2, 3 and 4 of common position 2001/931/CFSP are concerned, are specified in the Council's legislative acts amending Council common position 2001/931/CFSP of 27 December 2001. By not specifying the legal acts concerned the situation and only directing to general legislation adopted by the Council the situation is avoided in which every time Council decision is repealed there is a need to change national legislation. However this solution to established legal order is hindered. According to article 3 of the "Law of implementation of economic and the other international sanctions"[206] the adoption and alteration of international sanctions rests in sphere managed by the Government of Republic of Lithuania but going by article's 8 part 1 and 2, whereas part 1 states that only EU regulations do not need to be implemented while in part 2 there is a clear rule that Council decisions do need to be implemented in national legislation. It's noteworthy to mention that article 8 is still remains unaltered since Law of implementation of economic and the other international sanctions adoption in 2004 so it was simply not able to account changes post Lisbon Treaty and needs to be changed accordingly. As far as article 8 of Law of implementation of economic and the other international sanctions goes the most efficient solution would be to consider repealing this article alone since the changes carried over from the Lisbon treaty and it is not possible to account for future changes to the TEU and so the most efficient action could be considered to be to leave theoretical provisions to the TEU and TFEU.

To sum up the, the amendment to decree No. 113 will have to follow these requirements:

[205] Council decision 2013/395/CFSP of 25 July 2013 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2012/765/CFSP. Anex, No. 10.
[206] Ekonominių ir kitų tarptautinių sankcijų įgyvendinimo įstatymas// Valstybės Žinios. 2004, No. 68-2369)

– It will need to have a rule that sanctions described articles 2, 3 and 4 of Council common position 2001/931/CFSP of 27 December 2001 are set in EU Council legal acts (which includes Council decisions and implementing regulations) amending Council common position 2001/931/CFSP, and that sanctions described will be applied directly.

– It will need to list the Council common position 2009/468/CFSP of 15 June 2009 updating Common position 2001/931/CFSP, as the one which is listing persons, groups and entities to which only the article 4 of Council common position 2001/931/CFSP applies (part of the list in the annex of Council common position 2009/468/CFSP which is marked with asterisk)

– Following the legal practice established by the Government of the Republic of Lithuania the changes made to the decree will require to adopt a new decree which in turn would repeal Republic of Lithuania Government decree No. 113 of 6 February 2008 "On the measures implementing international sanctions in Republic of Lithuania, provided by European Union common position 2001/930/BUSP of 27 December 2001 on the application of specific measures to combat terrorism". This is established because of the previous practice – decree No. 113 also repealed (paragraph 6) decree No. 1027 of 18 October 2006 "On the measures implementing international sanctions in Republic of Lithuania, provided by European Union common position 2001/930/BUSP of 27 December 2001 on the application of specific measures to combat terrorism"[207] which in turn repealed the corresponding decree adopted before it (paragraph 7 – decree No. 137 of 9 February 2006[208]).

– Draft of the decree is produced in appendix 1, which incorporates the requirements mentioned.

[207] Government of the Republic of Lithuania decree No. 1027 of 18 October 2006 "Dėl priemonių įgyvendinant Lietuvos Respublikoje tarptautines sankcijas, numatytas 2001 m. gruodžio 27 d. Europos Sąjungos Tarybos bendrojoje pozicijoje 2001/930/BUSP dėl kovos su terorizmu"// Valstybės žinios. 2006, No. 112-4280.

[208] Government of the Republic of Lithuania decree No. 137 of 18 October 2006 "Dėl priemonių įgyvendinant Lietuvos Respublikoje tarptautines sankcijas, numatytas 2001 m. gruodžio 27 d. Europos Sąjungos Tarybos bendrojoje pozicijoje 2001/930/BUSP dėl kovos su terorizmu"// Valstybės žinios. 2006, No. 18-632.

CONCLUSIONS

1. While the definition of a restrictive measure was developed in the EU it does not change the fact that it is widely used as a synonym to sanctions as it is revealed in both scholars research and the EU documents that these terms are used interchangeably notwithstanding the fact that restrictive measures are more narrow in their scope and application.

2. The development of the EU restrictive measures was going along with the development in the UN sanction regime which no doubt had influence over the EU. The influence had its positive effects – with the introduction of targeted ("smart") restrictive measures it was possible to achieve goals pursued without affecting the general populace of states which would have been otherwise affected by broad measures imposed. Through the development of EU restrictive measures regime different types restrictive measures became apparent – arms embargoes, financial measures, trade measures, travel restrictions and diplomatic measures were identified as the main types of restrictive measures of EU.

3. The evolution and diversification between EU restrictive measures and UN sanctions came along with the new millennia with EU presence inevitably growing. The findings are unique in a way that they show how EU is influencing the development of UN SC despite the fact that for the past 40 years it was the UN which was influencing EU restrictive measures regime development but, as it was shown, it is turning the other way around and the EU is influencing the development of UN. The UN is pushed towards the judicial procedure in UN SC therefore guaranteeing the proper protection of rights of those targeted by UN SC sanction regime.

4. In 2008 with Kadi I case the status quo between EU and UN was challenged and in 2013 along with Kadi II case the stance of EUCJ was made clear. EUCJ established that it is not calling the primacy of UN SC resolutions in question by examining the case; therefore it by no means is an obstacle to review the lawfulness of restrictive measures, in the light of the fundamental rights, which are an integral part of the general principles and primary law of European Union. This gives a curious situation – the EU does not incur any consequences by not following the UN SC resolution since it is not a member of UN, the MSs, however, have to follow the UN SC resolutions and EU Courts decisions because obligations to both bodies are described in UN Charter, TEU and TFEU alike but at a situation like this, to do both at the same time looks rather impossible without

breaching obligation to either EU or UN. EU Courts stance gave rise to another implication – inside the EU borders there is different implementation of UN SC resolutions than the rest of the world which is because EU is disregarding the UN SC resolutions. However a positive aspect is that when considering the moves by UN which from the looks of it are to please the EU Courts (the establishment of Ombudsperson being the prime example), it gives rise to a thought that Solange II decision is still a possibility, with condition that UN SC follows through with the requirements established by the EUCJ.

5. Another part of EU restrictive measures, which need to be improved, is the implementation, monitoring and execution of the restrictive measures as these areas are the Achilles heel of EU. With no obligatory monitoring being carried the restrictive measures regime stays very obscure as far as the national implementation and execution is concerned. The establishment of EU institution which could be monitoring the MSs implementation and execution of restrictive measures should be the next step in evolution of restrictive measures regime of EU. With the help of such body it will not only be possible to keep track of legislation of MSs concerning the restrictive measures but in the future the uniform application of restrictive measures in EU could be achieved by putting to use the practice accumulated by such body.

6. The Government of the Republic of Lithuania decree No. 113 of 6 February 2008 "On the measures implementing international sanctions in Republic of Lithuania adopted by the Government of the Republic of Lithuania, provided by European Union common position 2001/930/BUSP of 27 December 2001 on the application of specific measures to combat terrorism" was found to be severely outdated and it needs to be improved in the following ways:

– A rule that sanctions described articles 2, 3 and 4 of Council common position 2001/931/CFSP of 27 December 2001 are set in EU Council legal acts (which includes Council decisions and implementing regulations) amending Council common position 2001/931/CFSP, and that sanctions described will be applied directly have to be introduced.

– The decree will need to follow the Council common position 2009/468/CFSP of 15 June 2009 updating Common position 2001/931/CFSP, as the one which is listing persons, groups and entities to which only the article 4 of Council common position 2001/931/CFSP applies (part of the list in the annex of Council common position 2009/468/CFSP which is marked with asterisk);

– Following the legal practice established by the Government of the Republic of Lithuania the changes made to the decree will require to adopt a new decree which in turn would repeal Republic of Lithuania Government decree No. 113 of 6 February 2008 "On the measures implementing international sanctions in Republic of Lithuania, provided by European Union common position 2001/930/BUSP of 27 December 2001 on the application of specific measures to combat terrorism". This is established because of the previous practice – decree No. 113 also repealed (paragraph 6) decree No. 1027 of 18 October 2006 "On the measures implementing international sanctions in Republic of Lithuania, provided by European Union common position 2001/930/BUSP of 27 December 2001 on the application of specific measures to combat terrorism" which in turn repealed the corresponding decree adopted before it (paragraph 7 – decree No. 137 of 9 February).

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SUMMARY

International sanction till the late twentieth century were used mostly by UN, however along with the Maastricht Treaty new actor in the international sanction scene emerged – the EU. Along with newfound powers came great burden as EU started to impose autonomous restrictive measures independent of UN sanctions. The sanctions in EU are called restrictive measures and while sharing the same general definition are of a different character which is being further on looked at.

Thesis attempts to explore the development of EU restrictive measures, their place in EU legal system, to look into how international sanctions came to the sphere of EU CFSP in a form of restrictive measures. Further on the influences on evolution of restrictive measures is analyzed and the radical changes in general understanding of restrictive measures are being presented in a form of EUCJ case law – the Kadi I and Kadi II cases are being scrutinized. It is found that until 2008 the UN was influencing the evolution of EU restrictive measures but after the facts are being analyzed in the period between Kadi I and Kadi II, the changes in the UN sanction regime as being influenced by EU are being presented and analyzed in the second part of the thesis.

The third parts of thesis is exploring the implementation, monitoring and execution of restrictive measures on national level in EU and mainly finds the shortcomings in this sphere as there are no obligatory monitoring carried out as to determine how EU restrictive measures are implemented and executed in different Member States. As a particular example of Member States shortcomings in EU restrictive measures implementation is given Government of the Republic of Lithuania decree implementing Council Common position 2001/931/CFSP. After throughout analysis of EU legislation it is found that Lithuania's implementation is flawed and based on analysis the suggestions are made as to how to improve Lithuania's legal acts to be in line with EU legislation and the final result – draft of legislation suggested – is being presented in appendix 1 of this thesis.

SANTRAUKA

Tarptautinės sankcijos iki pat dvidešimto amžiaus pabaigos buvo dažniausia naudojamos Jungtinių Tautų Organizacijos, tačiau kartu su Mastrichto Sutartimi tarptautinių sankcijų paveiksle atsirado naujas veikėjas – Europos Sąjunga. Kartu su naujomis galiomis Europos Sąjungai teko ir sunki našta, kadangi buvo pradedamos priimti savarankiškos ribojančios priemonės, kurios buvo visiškai nesusijusios su Jungtinių Tautų sankcijomis. Tarptautinės sankcijos Europos Sąjungoje yra vadinamos ribojančiomis priemonėmis, tačiau nors jų bendriniai apibrėžimai yra identiški, šie du terminai skiriasi, kas plačiau yra nagrinėjama magistriniame darbe.

Magistriniame darbe yra atskleidžiamas Europos Sąjungos ribojančių priemonių vystymasis, jų vieta Europos Sąjungos teisinėje sistemoje, aptariama tarptautinių sankcijų patekimo ribojančių priemonių forma į bendros užsienio ir saugumo politikos sritį. Darbe yra analizuojama kas turėjo poveikį ribojančių priemonių vystymuisi ir visa tai yra pateikia Europos Sąjungos Teisingumo Teismo praktika – Kadi I ir Kadi II bylos yra kruopščiai analizuojamos norint atskleisti šiuos aspektus. Išanalizavus medžiagą randama, kad iki 2008 m. Jungtinės Tautos turėjo didžiulę įtaką Europos Sąjungos ribojančių priemonių evoliucijoje, tačiau išnagrinėjus periodą tarp Kadi I ir Kadi II bylų ima aiškėti tendencija jog žaidimo taisyklės pasikeitė – šiuo metu Europos Sąjunga daro didžiulę įtaką permainoms vykstančios Jungtinių Tautų sankcijų santvarkoje, kas yra pateikiama antroje magistrinio darbo dalyje.

Trečioji magistrinio darbo dalis tyrinėja ribojančių priemonių įgyvendinimą, stebėjimą ir vykdymą nacionaliniu lygiu, o gauti rezultatai priverčia sunerimti – iš esmės randami tik trūkumai, kadangi šiuo metu nėra atliekama ribojančių priemonių stebėsena, nėra galimybių matyti bendrą vaizdą kaip valstybės narės įgyvendina ir vykdo ribojančias priemones. Kaip konkretus ribojančių priemonių įgyvendinimo pavyzdys yra pateikiamas Lietuvos Respublikos Vyriausybės nutarimas įgyvendinantis Tarybos bendrąją poziciją 2001/931/BUSP. Lietuvos pasirinkto įgyvendinimo trūkumai yra nustatomi atlikus visapusę Europos Sąjungos teisės aktų analizę, toliau teikiami pasiūlymai kaip pataisyti esamą situaciją ir kaip turėtų atrodyti teisės aktas, kuris atitiktų galiojančius Europos Sąjungos teisės aktus, ko pasėkoje magistrinio darbo priede Nr. 1 yra pristatomas teisės akto projektas atitinkantis keliamus reikalavimus.

ANNEXES

Appendix 1

Republic of Lithuania Government decree draft "On the measures to implement in the Republic of Lithuania international sanctions laid down in the Council Common Position 2001/930/CFSP of 27 December 2001 on combating terrorism". It is more appropriate to write down a decree draft in Lithuanian language and if need be, then translate it to english language, because in any case the national regulation have to be drafted in lithuanian language.

Projektas

LIETUVOS RESPUBLIKOS VYRIAUSYBĖ

NUTARIMAS
DĖL PRIEMONIŲ ĮGYVENDINANT LIETUVOS RESPUBLIKOJE TARPTAUTINES SANKCIJAS, NUMATYTAS 2001 M. GRUODŽIO 27 D. EUROPOS SĄJUNGOS TARYBOS BENDROJOJE POZICIJOJE 2001/930/BUSP DĖL KOVOS SU TERORIZMU

2013 m. d. Nr.

Vilnius

Vadovaudamasi Lietuvos Respublikos ekonominių ir kitų tarptautinių sankcijų įgyvendinimo įstatymu (Žin., 2004, Nr. 68-2369), įgyvendindama 2001 m. gruodžio 27 d. Europos Sąjungos Tarybos bendrosios pozicijos 2001/930/BUSP dėl kovos su terorizmu (OL 2004 m. specialusis leidimas, 18 skyrius, 1 tomas, p. 213) 2, 3 ir 9 straipsnius ir 2001 m. gruodžio 27 d. Europos Sąjungos Tarybos bendrąją poziciją 2001/931/BUSP dėl konkrečių priemonių taikymo kovojant su terorizmu (OL 2004 m. specialusis leidimas, 18 skyrius, 1 tomas, p. 217), ir 2009 m. birželio 15 d. Europos Sąjungos Tarybos bendrąją poziciją 2009/468/BUSP, atnaujinančią bendrąją poziciją 2001/931/BUSP dėl konkrečių priemonių taikymo kovojant su terorizmu ir panaikinančią bendrąją poziciją 2009/67/CFSP (OL 2009 L 151, p. 45), Lietuvos Respublikos Vyriausybė n u t a r i a :

1. Patvirtinti su teroro aktais susijusių asmenų, jų grupių ir organizacijų sąrašą (pridedamas), nurodytą 2009 m. birželio 15 d. ES Tarybos bendrojoje pozicijoje 2009/468/BUSP, atnaujinusioje

bendrąją poziciją 2001/931/BUSP, kuriems taikomas tik Europos Sąjungos Tarybos bendrosios pozicijos 2001/931/BUSP 4 straipsnyje numatytos priemonės kovojant su terorizmu.

2. Nustatyti, kad sąrašas asmenų, kuries taikomas Europos Sąjungos Tarybos bendrosios pozicijos 2001/931/BUSP 2, 3 ir 4 straipsniuose numatytos priemonės kovojant su terorizmu (toliau – sąrašas), yra tvirtinamas ES Tarybos sprendimuose, atnaujinančiuose bendrąją poziciją 2001/931/BUSP;

3. Apriboti į 2 punkte nurodytą sąrašą įrašytų fizinių ir juridinių asmenų teisę valdyti, naudoti finansų įstaigose jų turimas pinigines lėšas ir kitą turtą (įskaitant palūkanas) ir jais disponuoti, išskyrus šio nutarimo 5 punkte nurodytus atvejus.

4. Uždrausti finansų įstaigoms, draudimo įmonėms ir užsienio valstybių draudimo įmonių filialams:

4.1. atlikti bet kokius mokėjimus į įrašytų į sąrašą fizinių ir juridinių asmenų sąskaitas finansų įstaigose ir iš jų, išskyrus šio nutarimo 5 punkte nurodytus atvejus.

Finansų įstaigoms, draudimo įmonėms ir užsienio valstybių draudimo įmonių filialams atliekant debeto ir kredito pervedimus, išskyrus tarptautinius kredito pervedimus, jeigu lėšų mokėtojo ir gavėjo finansų įstaigos nesutampa, finansines sankcijas mokėtojui, nurodytam sąraše, įgyvendina mokėtojo finansų įstaiga, o sąraše nurodytam lėšų gavėjui – lėšų gavėjo finansų įstaiga, mokėtojo finansų įstaigai atlikus mokėjimą į lėšų gavėjo sąskaitą;

4.2. teikti bet kokias finansines ir draudimo paslaugas į sąrašą įrašytiems fiziniams ir juridiniams asmenims.

5. Nustatyti humanitariniais tikslais finansų įstaigoms, draudimo įmonėms ir užsienio valstybių draudimo įmonių filialams šias galimas šiuo nutarimu nustatomų apribojimų taikymo išimtis;

5.1. leidžiama atlikti mokėjimus iš sąraše nurodytų fizinių asmenų lėšų už jiems ar jų šeimos nariams suteiktas prekes ir paslaugas svarbiausioms žmogaus reikmėms tenkinti, įskaitant maisto produktus, vaistus, sveikatos priežiūros paslaugas, įmokas už šeimos būsto nuomą arba būsto kreditą;

5.2. leidžiama atlikti mokėjimus už sąraše nurodytiems fiziniams asmenims ar jų šeimos nariams, taip pat juridiniams asmenims tiekiamą karštą ir šaltą vandenį, elektros ir šilumos energiją, dujas, telekomunikacijų ir komunalines paslaugas;

5.3. leidžiama atlikti privalomus mokėjimus iš sąraše nurodytų fizinių ir juridinių asmenų lėšų, kurių reikia mokesčiams ir rinkliavoms į valstybės ir savivaldybių biudžetus, įmokoms į Valstybinio socialinio draudimo fondą, kitoms privalomojo draudimo įmokoms;

5.4. leidžiama išskaičiuoti teisės aktų nustatytą atlyginimą finansų įstaigai už sąraše nurodytų fizinių ar juridinių asmenų sąskaitų tvarkymą;

5.5. leidžiama atlikti mokėjimus į sąraše nurodytų fizinių ir juridinių asmenų sąskaitas pagal sutartis ar kitas prievoles, atsiradusias iki šio nutarimo įsigaliojimo.

6. Nustatyti, kad šiuo nutarimu nustatytų apribojimų taikymo priežiūra vykdoma vadovaujantis Tarptautinių sankcijų įgyvendinimo priežiūros tvarkos aprašu, patvirtintu Lietuvos Respublikos Vyriausybės 2004 m. gruodžio 30 d. nutarimu Nr. 1679 (Žin., 2005, Nr. 1-4).

7. Pripažinti netekusiu galios Lietuvos Respublikos Vyriausybės 2008 m. vasario 6 d. nutarimą Nr. 113 „Dėl priemonių įgyvendinant Lietuvos Respublikoje tarptautines sankcijas, numatytas 2001 m. gruodžio 27 d. Europos Sąjungos Tarybos bendrojoje pozicijoje 2001/930/BUSP dėl kovos su terorizmu“ (Žin., 2008, Nr. 20-737).

Ministras Pirmininkas

Užsienio reikalų ministras

PATVIRTINTA

Lietuvos Respublikos Vyriausybės

2013 m. d. nutarimu Nr.

SU TERORO AKTAIS SUSIJUSIŲ ASMENŲ, JŲ GRUPIŲ IR ORGANIZACIJŲ SĄRAŠAS

I. FIZINIAI ASMENYS

1. Alberdi Uranga, Itziar (E.T.A. aktyvistas), gim. 1963 m. spalio 7 d. Durango, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 78865693.

2. Albisu Iriarte, Miguel (E.T.A. aktyvistas, Gestoras Pro-amnistia narys), gim. 1961 m. birželio 7 d. San Sebastian (Guipuzcoa), asmens tapatybės kortelės Nr. 15.954.596.

3. Alegría Loinaz, Xavier (E.T.A. aktyvistas, K.a.s./Ekin narys), gim. 1958 m. lapkričio 26 San Sebastián, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 15.239.620.

4 Apaolaza Sancho, Ivan (E.T.A. aktyvistas, K.Madrid narys), gim. 1971 m. lapkričio 10 d. Beasain, Guipuzcoa (Ispanija), asmens tapatybės kortelės Nr. 44.129.178.

5. Aspiazu Rubina, Miguel de Garikoitz (E.T.A. aktyvistas), gim. 1973 m. liepos 6. Bilbao, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 14.257.455.

6. Arzallus Tapia, Eusebio (E.T.A. aktyvistas), gim. 1957 m. lapkričio 8 d. Regil, Guipuzcoa (Ispanija), asmens tapatybės kortelės Nr. 15.927.207.

7. Beloqui Resa, María Elena (E.T.A. aktyvistė, Xaki narė), gim. 1961 m. birželio 12 d. Areta, Álava (Ispanija), asmens tapatybės kortelės Nr. 14.956.327.

8. Campos Alonso, Miriam (E.T.A. aktyvistė, Xaki narė), gim. 1971 m. rugsėjo 2 d. Bilbao, Biskaja (Ispanija), tapatybės kortelės Nr. 30.652.316.

9. Corta Carrion, Mikel (E.T.A. aktyvistas, Xaki narys), gim. 1959 m. gegužės 15 d. Villafranca de Ordicia, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 08.902.967.

10. Echeberria Simarro, Leire (E.T.A. aktyvistas), gim. 1977 m. gruodžio 20 d. Basauri, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 45.625.646.

11. Echegaray Achirica, Alfonso (E.T.A. aktyvistas), gim. 1958 m. sausio 10 d. Plencia, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 16.027.051.

12. Eguibar Michelena, Mikel (E.T.A. aktyvistas), gim. 1963 m. lapkričio 14 d. San Sebastián, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 44.151.825.

13. Gogeascoechea Arronategui, Eneko (E.T.A. aktyvistas), gim. 1967 m. balandžio 29 d. Guernica, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 44.556.097.

14. Iparraguirre Guenechea, Ma Soledad (E.T.A. aktyvistas), gim. 1961 m. balandžio 25 d. Escoriaza, Navarra (Ispanija), asmens tapatybės kortelės Nr. 16.255.819.

15. Iriondo Yarza, Aitzol (E.T.A. aktyvistas), gim. 1977 m. kovo 8 d. San Sebastián, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 72.467.565.

16. Martitegui Lizaso, Jurdan (E.T.A. aktyvistas), gim. 1980 m. gegužės 10 d. Durango, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 45.626.584.

17. Morcillo Torres, Gracia (E.T.A. aktyvistas, Kas/Ekin narys), gim. 1967 m. kovo 15 d. San Sebastian, Guipuzcoa (Ispanija), asmens tapatybės kortelės Nr. 72.439.052.

18. Narvaez Goni, Juan Jesus (E.T.A. aktyvistas), gim. 1961 m. vasario 23 d. Pamplona, Navarra (Ispanija), asmens tapatybės kortelės Nr. 15.841.101.

19. Olano Olano, Juan María (E.T.A. aktyvistas, Gestoras Pro-amnistía/Askatasuna narys), gim. 1955 m. kovo 25 d. Gainza, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 15.919.168.

20. Olarra Aguiriano, José María (E.T.A. aktyvistas, Xaki narys), gim. 1957 m. liepos 27 d. Tolosa, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 72.428.996.

21. Orbe Sevillano, Zigor (E.T.A. aktyvistas, Jarrai/Haika/Segi narys), gim. 1975 m. rugsėjo 22 d. Basauri, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 45.622.851.

22. Palacios Alday, Gorka (E.T.A. aktyvistas, K. Madrid narys), gim. 1974 m. spalio 17 d. Baracaldo, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 30.654.356.

23. Perez Aramburu, Jon Inaki (E.T.A. aktyvistas, Jarrai/Haika/Segi narys), gim. 1964 m. rugsėjo 18 d. San Sebastian, Guipuzcoa (Ispanija), asmens tapatybės kortelės Nr. 15.976.521.

24. Quintana Zorrozua, Asier (E.T.A. aktyvistas, K. Madrid narys), gim. 1968 m. vasario 27 d. Bilbao, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 30.609.430.

25. RETA DE FRUTOS, José Ignacio (E.T.A. aktyvistas, Gestoras Pro-amnistía/Askatasuna narys), gim. 1959 m. liepos 3 d. Elorrio, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 72.253.056.

26. Rubenach Roig, Juan Luis (E.T.A. aktyvistas, K.Madrid narys), gim. 1963 m. rugsėjo 18 d. Bilbao, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 18.197.545.

27. Txapartegi Nieves, Nekane (E.T.A. aktyvistas, Xaki narys), gim. 1973 m. sausio 8d. Asteasu, Guipúzcoa (Ispanija), asmens tapatybės kortelės Nr. 44.140.578.

28. Uranga Artola, Kemen (E.T.A. aktyvistas, Herri Batasuna/E.H/Batasuna narys), gim. 1969 m. gegužės 25 d. Ondarroa, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 30.627.290.

29. Urruticoechea Bengoechea, José Antonio (E.T.A. aktyvistas), gim. 1950 m. Gruodžio 24. Miravalles, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 14.884.849.

30. Vallejo Franco, Inigo (E.T.A. aktyvistas), gim. 1976 m. gegužės 21 d. Bilbao, Biskaja (Ispanija), asmens tapatybės kortelės Nr. 29.036.694.

31. Vila Michelena, Fermin (E.T.A. aktyvistas, Kas/Ekin narys), gim. 1970 m. kovo 12 d. Irun, Guipuzcoa (Ispanija), asmens tapatybės kortelės Nr. 15.254.214.

II. GRUPĖS IR ORGANIZACIJOS

1. Meistrų kooperatyvas „Ugnis ir panašiai – retkarčiais įspūdinga“ (it. Cooperativa Artigiana Fuoco ed Affini – Occasionalmente Spettacolare; angl. Artisans’ Cooperative Fire and Similar – Occasionally Spectacular).

2. Ginkluotos grupės už komunizmą (it. Nuclei Armati per il Comunismo; angl. Armed Units for Communism).

3. Kovos prieš kapitalą, kalėjimus, kalėjimų prižiūrėtojus ir kalėjimų kameras skyrius (it. CCCCC – Cellula Contro Capitale, Carcere I suoi Carcerieri e le sue Celle; angl. Cell Against Capital, Prison, Prison Warders and Prison Cells).

4. Nuoseklioji airių respublikonų armija (angl. Continuity Irish Republican Army (CIRA).

5. Revoliucinė kova (graik. Epanastatikos Agonas, angl. Revolutionary Struggle).

6. Baskų tėvynė ir laisvė (baskų/isp. Euskadi Ta Askatasuna/Tierra Vasca y Libertad (E.T.A); angl. Basque Fatherland and Liberty) (toliau išvardytos organizacijos yra E.T.A teroristinės grupės dalys: K.a.s., Xaki, Ekin, Jarrai Haika Segi, Gestoras pro-amnistia, Askatasuna, Batasuna (taip pat žinoma kaip Herri Batasuna arba Euskal Herritarrok), Acción Nacionalista Vasca / Euskal Abertzale Ekintza (ANV/EAE), Partido Comunista de las Tierras Vascas/Euskal Herrialdeetako Alderdi Komunista (PCTV/EHAK)).

7. Antifašistinės pasipriešinimo grupės „Spalio pirmoji“ (isp. Grupos de Resistencia Antifascista Primero de Octubre (G.R.A.P.O.); angl. Antifascist Resistance Groups First of October).

8. Tarptautinis solidarumas (it. Solidarieta Internazionale; angl. International Solidarity).

9. Lojalistų savanorių pajėgos (LSP) (angl. Loyalist Volunteer Force (LVF).

10. Oranžo savanoriai (OS) (angl. Orange Volunteers (OV).

11. Tikroji airių respublikonų armija (Tikroji ARA) (angl. Real IRA).

12. Kovojančios komunistų partijos kūrimo raudonosios brigados (it. Brigate Rosse per la Costruzione del Partito Comunista Combattente; angl. Red Brigades for the Construction of the Fighting Communist Party).

13. Raudonosios rankos gynėjai (RRG) (angl. Red Hand Defenders (RHD).

14. Revoliuciniai branduoliai (graik. Epanastatiki Pirines; angl. Revolutionary Nuclei).

15. Revoliucinė organizacija „Lapkričio 17-oji“ (graik. Dekati Evdomi Noemvri; angl. Revolutionary Organisation 17 November).

16. Liepos 20-osios brigada (it. Brigata XX Luglio; angl. Twentieth of July Brigade).

17. Olsterio gynybos asociacija/Olsterio laisvės kovotojai (OGA/OLK) (angl. Ulster Defence Association/Ulster Freedom Fighters (UDA/UFF).

18. Neoficiali anarchistų federacija (NAF) (it. F.A.I. – Federazione Anarchica Informale; angl. Unofficial Anarchist Federation).